**BAKER BOTTS** L.L.P.

ONE SHELL PLAZA
910 LOUISIANA
HOUSTON, TEXAS
77002-4995

TEL +1 713.229.1234
FAX +1 713.229.1522
www.bakerbotts.com

ABU DHABI
AUSTIN
BEIJING
DALLAS
DUBAI
HONG KONG
**HOUSTON**
LONDON
MOSCOW
NEW YORK
PALO ALTO
RIYADH
WASHINGTON

Timothy S. Taylor
TEL +1 713.229.1184
FAX +1 713.229.7784
timothy.taylor@bakerbotts.com

June 29, 2011

BY E-MAIL: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549-1090
Attention: Elizabeth M. Murphy, Secretary
Re: Release No. 34-64148 (File No. S7-14-11)

BY E-MAIL: Comments@FDIC.gov

Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
Attn: Robert E. Feldman, Executive Secretary, Comments
Re: RIN 3064-AD74

BY E-MAIL: regs.comments@occ.treas.gov

Department of the Treasury
Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 2-3
Washington, DC 20219
Re: Credit Risk Retention-Docket No. OCC-2011-0002

BY E-MAIL: RegComments@fhfa.gov

Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552
Attn: Alfred M. Pollard, General Counsel
Re: RIN 2590-AA43

BY E-MAIL: regs.comments@federalreserve.gov

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
Attention: Jennifer J. Johnson, Secretary
Re: Docket No. R-1411

VIA ELECTRONIC SUBMISSION:
www.regulations.gov

Department of Housing and Urban Development
Regulations Division
Office of the General Counsel
451 7th Street, SW, Room 10276
Washington, DC 20410-0500
Re: Docket No. FR-5504-P-01

Re: Release No. 34-64148 (File No. S7-14-11)

Ladies and Gentlemen:

Baker Botts L.L.P. submits this letter in response to the request for comments made by the Securities and Exchange Commission (the "**Commission**") in Release No. 33-64148, "Credit Risk Retention" (the "**Release**"). In the Release, the Commission has proposed rules to implement the credit risk retention requirements of Section 15G of the Securities Exchange Act of 1934 promulgated by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which generally requires sponsors of asset-backed securities to retain at least five percent of the credit risk of the assets collateralizing the securities. Since the rules proposed in the Release involve parallel proposed rules of the Commission, of the Department of the Treasury, of the Office of the Comptroller of the Currency, of the Federal Deposit Insurance Corporation, of the Board of Governors of the Federal Reserve System, of the Federal Housing Finance Agency, and of the Department of Housing and Urban Development, we have addressed and are delivering this letter to all of the agencies.

In this letter, we propose that the final rules implementing Section 15G's credit risk retention requirements exempt asset-backed securities issued by regulated electric utilities that are backed by stranded costs, transition property, system restoration property and other types of property specifically created or defined for those securitizations by the state legislatures. We refer to these types of transactions as "**Utility Legislative Securitizations**." In short, we believe that, in light of the existing features and elements unique to Utility Legislative Securitizations, the proposed rules would not add to existing protection for investors, and any benefit resulting from the rules would be outweighed by the increased costs placed on utilities, and, ultimately, their customers, thereby frustrating legislative policy underlying these transactions. The Commission, in its April 2010 proposal to amend Regulation AB, has recognized structural differences between Utility Legislative Securitizations and other asset-based securitizations. Accordingly we will mention some of the most important elements of these structures that support an exemption from the risk-retention proposal.

*The Legislative Basis for Utility Legislative Securitizations*

Many state legislatures have authorized regulated electric utilities to recover a variety of incurred costs, including costs associated with the transition to competitive retail electric markets, costs associated with repairing damage caused by natural disasters and costs associated with installing pollution control equipment. In these instances the legislatures have permitted the utilities to impose, subject to governmental approval and the satisfaction of certain financial tests, dedicated charges, or tariffs, on existing and future customers. In furtherance of the policy, the legislation (together with related financing orders by state regulatory agencies) permits utilities to sponsor the issuance of securities in structures where the amounts received from the tariff fund the issuer's payments of interest and principal on the securities. The proceeds from the issuance of the securities are then used to recover the utility's incurred costs quickly and at the lowest cost available under market conditions at the time of the issuance. The forms of Utility Legislative Securitizations are virtually uniform across all of the states (currently at least 15) who have authorized these programs.

Among the reasons for that uniformity is the effect of guidelines of the Internal Revenue Service that dictate the structure necessary to achieve the most tax efficient results of financing for these recoveries and repairs. These IRS guidelines require, among other things, the enactment of state legislation authorizing (a) the creation of a property right owned by the utility to collect specified amounts in the form of a tariff and (b) securitization of that right through the issuance of bonds or similar obligations.

The authorizing legislation establishes the collection of the tariff as an irrevocable property right that is transferred by the utility to a special purpose entity to support the issuance of and debt service payments on the securities. The legislation invariably includes a pledge by the state (and in some cases, the relevant state agency or commission) that prohibits future state legislatures and state regulatory agencies from rescinding, altering or amending the tariff in a manner that would reduce the value of payments to service the securities. Once securities are issued under the authorizing legislation and agency order, investors rely on the state's commitment to honor the pledge pursuant to the U.S. Constitution's "contracts" and "takings" clauses (U.S. CONST. art. I, §10; U.S. CONST. amend. V) and similar state constitutional provisions.

Under the authorizing legislation, the tariff is a "nonbypassable" charge that all (or certain classes) of the users of electric utility services in the utility's service area must pay. Accordingly, utilities assess the tariff as a charge on the delivery of the electricity to the retail provider or directly to the consumer. As a result, regardless of which retail provider actually supplies the electricity delivered to the customer or whether the utility itself provides that electricity, the utility collects the tariff based on the delivery of the electricity.

One of the most important features of Utility Legislative Securitizations, which is not present in typical asset-backed securities offerings, is a legislative true-up mechanism in which the tariff is required to be adjusted at least annually (and in many cases more frequently) to provide for continued recovery from customers of amounts sufficient to fund debt service and other charges of the securities. For example, true-ups can increase or decrease the tariff based on differences in actual electricity consumption compared to the utility's projections. In practice, the true-up mechanism has proven to be an effective method to ensure that the tariff generates sufficient revenue to permit issuers to satisfy their payment obligations under the securities.

Utilities, as sponsors of Utility Legislative Securitizations, capitalize the special purpose entity that issues the securities in an amount typically ranging from 0.5% to 1% of the principal balance of the securities. Contrasted with other forms of asset-backed securities, rating agencies have reached the conclusion that this level of capitalization in Utilities Legislative Securitizations is sufficient to support the highest investment grade ratings of the securities, due in large part to the other structural features of these securities, including (among others) the state pledge not to impair the utility's ability to collect the tariff and the ability to adjust the tariff as needed to ensure sufficient revenues.

*Utility Legislative Securitizations Do Not Contain Similar Origination and Underwriting Risks as Compared to Traditional Asset-Backed Securities*

Requiring sponsors of Utility Legislative Securitizations to retain a portion of the underlying assets would not have a positive effect on the quality of the underlying assets or the related securities. On the contrary, such a requirement would increase the cost of financing for the utility, which would ultimately be passed along to its customers or the end-user consumer, and which may have a prohibitive effect on the issuance of securities in an Utility Legislative Securitization if the applicable financial test(s) cannot be met because of the additional risk retention requirement.

The risk retention requirements of Section 15G are intended to align the economic interests of sponsors of traditional asset-backed securities (*e.g.*, collateralized debt obligations and securities backed commercial or residential mortgages) with those of investors and to ensure the quality of the assets underlying a particular class or series of asset-backed securities. In enacting Section 15G, Congress sought to address perceived failures by lenders and underwriters, who, using an "originate to distribute" business model, loosened their underwriting standards in making loans to less creditworthy borrowers and subsequently packaging and selling the loans in asset-backed securities offerings (and thereby shedding the credit risk inherent in the underlying assets). With this in mind, the Commission noted in the Release that sponsors of these types of securities played an "active and direct role… in arranging a securitization transaction and selecting the assets to be securitized."

Traditional asset-backed securities transactions are subject to risk of undercollection or default by underlying obligors, and the risk of inability to find replacements for those original obligors. Traditional asset-backed securities transactions seek to mitigate these risks by imposing certain credit enhancements as part of the securities package, including, among others, overcollateralization of the security and the creation of capital accounts and subordinated tranches. In the context of many of these traditional asset-backed securities offerings, requiring sponsors to maintain "skin in the game" is not an irrational approach to attempting to ensure sufficient quality of the assets underlying the securities.

The primary risk that Section 15G is intended to address—namely, the risk that lenders and underwriters will make or acquire imprudent or risky debt obligations and subsequently offload a default risk to investors imbedded in asset-backed securities—is not present in the context of Utility Legislative Securitizations. Sponsors of Utility Legislative Securitizations do not arrange the securitization transaction and do not select the assets to be securitized. Utility Legislative Securitizations do not contain origination or underwriting elements similar to typical mortgage or other loan transactions, and as a result do not contain the same credit and underwriting risk.

Differing from traditional asset-backed securities, the underlying asset in a Utility Legislative Securitization is a state-sponsored right to impose, collect and receive a tariff on users of electricity in a particular geographical area. The tariffs charged in connection with Utility Legislative Securitizations are enacted by state statute and are specifically approved by regulatory action and are imposed broadly on all, or large classes of electricity users based on such user's electricity consumption. The securities issued in a Utility Legislative Securitization are backed by the revenue to be received by all customers that are subject to the tariff; sponsors of Utility Legislative Securitizations do not choose which of its customers will participate in the securitization.

In addition, Utility Legislative Securitizations do not need the added credit enhancement that the proposed risk-retention rules may provide. Because of the statutory protections afforded to Utility Legislative Securitization, as well as unique features contained in these transactions (such as the state-mandated true-up mechanism), all such securities issued to date (over $43 billion in 51 transactions) have received the highest investment grade credit rating by national ratings agencies. We are not aware of any default or ratings downgrade under any Utility Legislative Securitizations, even during the troubling economic environment of the past few years. Any further credit enhancement in the nature of risk retention would provide little benefit to investors but place significant additional burdens on the sponsors, which burden would be passed on to the utility's customers or electricity users.

*Conclusion*

Section 15G(c)(1)(G)(i) permits the Commission to issue exemptions, exceptions or adjustments to the credit risk-retention requirements, including exemptions "as may be appropriate in the public interest and for the protection of investors." The points noted above—legislation and regulatory control, absence of any difference in sponsor and investor credit motivation, and the absence of any true underwriting risk--all support an exception for these issuances. Moreover, the Commission is permitted to provide an exemption if it would, among other things, "help ensure high quality underwriting standards" and "improve the access of consumers and businesses to credit on reasonable terms." Section 15G(e). As noted, the sort of high underwriting standards endorsed by Section 15G could not be impaired in Utility Legislative Securitizations. In addition, we believe that exempting Utility Legislative Securitizations from the risk-retention requirements would have a beneficial impact on utilities' ability to access credit on reasonable terms and therefore lower costs to electricity consumers.

Baker Botts L.L.P. appreciates the opportunity to comment on the Release. Please do not hesitate to contact Timothy S. Taylor at 713.229.1184 if you have any questions or would like to discuss these matters further.

Respectfully submitted,

Timothy S. Taylor

Timothy S. Taylor