November 10, 2025

Hon. Paul S. Atkins, Chairman
Hon. Hester M. Peirce, Commissioner
Hon. Caroline A. Crenshaw, Commissioner
Hon. Mark T. Uyeda, Commissioner

U.S. Securities and Exchange Commission
100 F ST, NE
Washington, DC 20549

Re: Public Utility Revenue Bonds
Comment on SEC Concept Release on Residential Mortgage-Backed Securities Disclosures and Enhancements to Asset-Backed Securities Registration
File Number S7-2025-04

Dear Chairman Atkins and Commissioners Peirce, Crenshaw, and Uyeda,

For the more than a year, a group of eight Governors, state public utility commissioners, utility consumer advocates, and industry legal and financial analysts have diligently worked with the staff (the "Staff") of the Division of Corporation Finance (the "Division") at the Securities and Exchange Commission (the "SEC") to address the inaccurate reclassification of investor-owned utility recovery bonds ("URBs") from corporate bonds to asset-backed securities ("ABS").[1]

The SEC's treatment of URBs is largely based on a series of determinations made by the Staff in the course of processing individual registration statements, rather than as part of a more comprehensive, consistent framework. Nevertheless, the positions taken by the Staff over nearly 28 years, as well as independent legal analysis provided to the Staff, clearly show that URBs are not ABS. The Staff's recent action to reclassify URBs as ABS appears to have no basis in law or policy, distorts the efficiency of the bond market, and, most importantly, leads to an interest rate penalty on billions of dollars in bonds and millions of Americans' electric bills.

We wrote to former Chairman Gensler on September 10, 2024 with some questions and concerns and began meetings with the Staff on December 13, 2024. Those meetings continued productively until, on May 16, 2025, the Staff unexpectedly concluded the SEC itself needed to act, not the Staff, because the SEC granted URBs exemptions from regulations that apply to ABS. As best we can tell, the Staff has adopted the view that the SEC's action to create an exemption supplants the need to establish how URBs meet the definitions of ABS in the first instance.[2]

Electricity prices are rising across the country, and utilities have billions of dollars in increased liabilities from natural disasters. Investment in grid security, reliability, and generation is growing. At times like

[1] The National Association of Regulatory Utility Commissioners ("NARUC") and the National Association of State Utility Consumer Advocates ("NASUCA"), who represent everyday American electricity and natural gas consumers, adopted resolutions at their November, 2024 annual meetings supporting the Governors efforts. Their representatives joined the Governors' discussions with the Staff. NARUC resolution is available on page 7 at https://pubs.naruc.org/pub/812873F4-E348-B77F-4D75-E513FF13A86D; NASUCA's is linked at https://www.nasuca.org/wp-content/uploads/2024/11/2024-01-Utility-Recovery-Bond-Classification-Resolution.pdf

[2] *See*, *Staff Compliance and Disclosure Interpretations ("CDI") Section 112. Form SF-1*, 112.01 Form Eligibility for Public Utility Securitizations, initially published on July 31, 2024 and as recently updated on May 16, 2025, and 112.02 Public Utility Securitizations, Updating Guidance, as initially published on May 16, 2025 https://www.sec.gov/about/divisions/corpfin/guidance/asset-backed-securities.

these, absent a basis in law or policy, the SEC should not be making it more expensive and more difficult to raise the needed capital at the lowest cost to the customers. Yet the Staff's decisions are having this consequence. According to a March 14, 2025 industry publication, these pristine AAA/Aaa/AAA rated URBs produce "outsized returns" and "fat yields" in an "extremely concentrated" market when treated as ABS.

Most recently, on September 26, 2025, the SEC published a Concept Release,[3] the principal focus of which is to solicit comment on (i) whether to amend the asset-level disclosure requirements for residential mortgage-backed securities and (ii) whether to revise generally the definition of "asset-backed security" and/or other definitions in Item 1101 of Regulation AB. In providing background relating to the various definitions of "asset-backed security" in SEC regulations, the Concept Release includes a number of conclusory statements characterizing URBs as ABS and identifies certain regulatory actions concerning the SEC's historical treatment of URBs. For the reasons set out in this letter, we respectfully submit that these conclusory statements are without foundation and this account of regulatory actions in this space is selective, materially inaccurate and incomplete, and appears to be intended to recast the Staff's historical actions with respect to URBs in a manner that aligns with recent Staff actions to reclassify URBs as ABS. As a result, our earlier letter to former Chairman Gensler, as well as this letter, are submitted not only in response to the Staff's CDIs reclassifying URBs as ABS but also as comment letters on the Concept Release.

As Chair and the SEC, we urge you to exercise your administrative authority over the Staff to resolve this issue that:

1. Contradicts the established legal definitions of "asset-backed securities" and would require that those definitions first be revised through formal rulemaking, including public engagement, in ways that would depart markedly from the principles currently imbedded in those definitions,[4]
2. Imposes a hidden cost on electricity consumers by increasing the utility's cost of borrowing,
3. Imposes an unnecessary regulatory burden and increases compliance costs with no clear regulatory or economic benefits,
4. Provides no demonstrated investor protection or public benefit,
5. Undermines the SEC missions for efficient and orderly capital markets and capital formation,
6. Could result in further rate penalties for similar revenue fee-based municipal bonds, and
7. Directly contradicts the President's Executive Order 14192 that seeks to reduce regulatory overreach.

SEC Record Supports Our Request for Remedial Action

As noted above, the Concept Release suggests that the SEC has treated URBs as ABS for many years when, in fact, the opposite is true and the Staff has only recently sought to reclassify URBs as ABS.

[3] *See* "Concept Release on Residential Mortgage-Backed Securities Disclosures and Enhancements to Asset-Backed Securities Registration," Release Nos. 33-11391; 34-104102; File No. S7-2025-04, September 26, 2025 (the "Concept Release").

[4] We note that the SEC may lack rulemaking authority to revise the definition of "asset-backed security" set forth in Section 3(a)(79) of the Securities Exchange Act of 1934 (the "Exchange Act") to modify or effectively eliminate the "self-liquidating financial asset" requirement embedded in that definition.

1. Through and including the adoption of Regulation AB, the record is replete with evidence that none of the SEC, the Staff, or market participants viewed URBs as ABS;[5]
2. Following Regulation AB's adoption, the Staff determined that certain reporting standards from Regulation AB – in particular, the filing of monthly and annual servicing reports – would be more useful to investors in their evaluation of URBs than audited financial statements of the issuer would be, and so the Staff adopted a ***policy position*** that acknowledged that URBs did not fit the ABS definition but nevertheless directed URB issuers to report under the Regulation AB framework, which it believed was better suited as the starting point for URBs;[6]
3. This policy-based approach, which recognizes URBs as corporate securities but also with limited characteristics in common with ABS, remained in place for nearly two decades, until the Staff upset that position by issuing its July 31, 2024 CDI.
4. Indeed, in 2015-16 the first URB registration statement filed after the adoption of Regulation AB II, which was the subject of a rigorous review by the Staff, prominently described the URBs in numerous places as "corporate securities" and not ABS and the Staff made no comment suggesting that the URBs were ABS.

Neither the SEC nor the Staff Has Produced Any Analysis that Justifies Its Recent Departure from Its Past Record

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[5] In 1997, when the first present-day URBs were registered for offer and sale, the Staff swiftly and categorically rejected efforts to characterize URBs as ABS, indicating that URBs are "much more analogous to a normal corporate debt offering where a corporation may vary prices for a product such that it may service its stated amount of debt and unlike a typical asset-backed offering where a discrete pool of receivables are securitized."

In 2004, the SEC proposed and then adopted Regulation AB, establishing an alternative registration, disclosure and reporting framework for ABS. As the gateway to this new regulatory framework, the definition of "asset-backed security" was the subject of intense scrutiny by the SEC and the securitization market, yet neither the SEC's proposing/adopting releases nor market commentary on the rulemaking contains a single reference to URBs or suggesting that URBs should be treated as ABS. Moreover, the definition of ABS consists of a core definition and a series of additional qualifications and bespoke exceptions that were part of a deliberate effort to capture every type of security that had been registered for public offer and sale as ABS prior to the adoption of Regulation AB and, conversely, to exclude any other structured securities. It is absolutely clear, therefore, that neither the SEC nor its Staff believed URBs were ABS under Regulation AB at the time of its adoption.

[6] Footnote 106 in the Concept Release and related text in the SEC's commentary make reference to a September 19, 2007 no-action letter and characterize that no-action letter as being issued in response to a request from URB registrants seeking access to the forms available under the Regulation AB disclosure and reporting regime. This is categorically false. The public record clearly shows that these URB registrants, MP Environmental Funding LLC and PE Environmental Funding LLC, mindful of the character of URBs as corporate bonds, filed registration statements for their URB offerings on Form S-1 as corporate registrants and indicated their intention to file periodic reports using Forms 10-Q and 10-K as applied to corporate registrants.

Following Staff challenges to this approach, the registrants proposed following an "Enhanced Corporate Securities Disclosure Regime" comprised of most or all of the disclosure and reporting standards applicable to corporate registrants, but enhanced to include specified information contemplated by Regulation AB, such as the amount of remittances made to the indenture trustee monthly, collection account and bond balances, and information about true-up activity. The Staff continued to disagree and directed the registrants to file periodic reports in respect of the bonds in compliance with the reporting regime established in Regulation AB and to submit a request for a no-action letter confirming these matters. The direction to report under Regulation AB and to submit the no-action letter was, therefore, orchestrated by the Staff, not the registrants. Notably, these registrants continued to file on Form S-1 for their respective follow-on offerings in 2009.

The Staff's May 16, 2025 revised CDI avoids providing any analysis or justification by citing SEC rulemaking actions to exempt URBs from ABS-specific rules, including risk retention requirements. After nine months of conversations with us, the Staff's revision to its CDI obscures the fact that it is the Staff's patchwork of positions with respect to URBs that created market confusion and uncertainty about how the Staff viewed URBs. That confusion and uncertainty prompted market commentary to exempt URBs from these regulations as a precautionary measure. This in turn prompted the SEC to create those exemptions.[7] The cycle began with positions taken by the Staff – positions that have never been supported with a credible explanation of how URBs meet any definition of ABS – and should be resolved at the Staff level.

Prior to publishing the Concept Release, neither the SEC nor the Staff had ever issued guidance or otherwise explained how URBs meet any definition of ABS or how it is in the public interest (and not just the convenience of the Staff) to treat them as ABS.

The Concept Release characterizes URBs as satisfying the "core principles" of the ABS definitions and, for the first time, purports to explain how the regulatory recovery property supporting URBs is a "self-liquidating financial asset." But this explanation is flawed and ignores key differences between URBs and ABS. The recovery property is an intangible property right to impose, bill, and collect a consumption-based charge on customers of the parent utility in connection with the delivery of future electric or gas utility services. The recovery property also includes a right to make periodic adjustments to those charges (referred to as a "true up" process) to manage the imposition and collection of revenues in the amounts and at the times necessary to repay the bonds on time. As a result, unlike a static or revolving ABS asset pool, the cash flows necessary to service the URBs depend *entirely* on the parent utility's (or a successor's) ongoing operations, the effective implementation of the periodic true-up process, and continued customer demand for/purchases of electricity or gas, mirroring the sources of repayment of traditional utility corporate bonds. The recovery property does <u>not</u>, therefore, convert into cash "by its terms," but <u>only</u> through active management.

To amplify on this point, if technological changes or catastrophic or other events cause the supply of, or the demand for, future electric or gas service in the designated service area to be suspended or to cease outright, the right of the owner of the property right to assess future charges in respect of future services will not, in fact, give rise to a legal obligation of anyone to pay future charges. In contrast, in an ABS transaction, the owner of a self-liquidating financial asset would continue to have an enforceable claim for payment following such changes or events. This example illustrates a fundamental difference between URBs, where no obligation to pay future charges arises unless the utility (or a successor) continues to deliver service, and ABS, where the obligation to repay exists from the outset and creates an enforceable claim for payment regardless of future events or actions.[8]

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[7] The market understood that the Staff had directed URB issuers to use forms prescribed for use under Regulation AB and, as a consequence, requested these exemptions as a precaution, in the event the regulator adopted the view that URBs were ABS. Notably, one commenter on the proposed risk retention rules, after advocating for an exemption for URBs, went on to point out that URBs are actually outside the definition of ABS, and another commenter, in advocating for the exemption, highlighted the very features that make URBs corporate bonds rather than ABS. *See,* Letter of Eric D. Tashman, Sidley Austin LLP, dated April 20, 2010; and Letter of Michael F. Fitzpatrick, Jr. et al., Dewey & LeBoeuf LLP, undated but submitted on April 15, 2011, each in response to the request for comments made by the SEC in connection with Release No. 34-64148 (proposed rules to implement the credit risk retention requirements of section 15G of the Exchange Act). Footnote 4 to Mr. Tashman's letter states: "Indeed, as discussed above, the security issued in an Utility Securitization (i.e., a security secured by the right to impose and collect an irrevocable, nonbypassable and adjustable Special Charge on utility customers) should be excluded from the definition of 'asset-backed security' under Section 941(a) of the Dodd-Frank Act."

[8] This dependence on the ongoing operations of the utility also frames another fundamental difference between URBs and ABS. ABS are fully collateralized by self-liquidating financial assets on the date of issuance, meaning that the principal amount of the self-liquidating assets on the date of issuance equals or exceeds the principal amount

Moreover, the imposition and collection of a charge on future sales, together with a covenant to adjust rates as necessary to ensure collections sufficient to pay scheduled debt service, is common for many state and local government municipal revenue bonds. Because these municipal securities are collateralized by a regulatory covenant, not a contractual covenant from the purchaser of goods or services, municipal issuers and their counsel commonly have not treated these as "asset-backed securities" for purposes of section 3(a)(79) of the Exchange Act.[9] The Staff has ignored this municipal industry understanding and practice. Nor has the Staff considered the possible unintended consequences in the municipal bond market if market makers in the municipal secondary market must comply with Exchange Act rules applicable to ABS whether or not the bonds are exempt from SEC registration.

The Staff has also failed to identify any policy reason to treat URBs as ABS. None of the post-financial crisis regulations has practical application to URBs and the Staff has not identified any other investor protection concerns that are advanced by treating URBs as ABS. Finally, the Staff's CDIs also defy principles that promote clear and plain disclosure by prohibiting URB issuers from describing the significant and defining features URBs share in common with other corporate securities, features that also fundamentally distinguish URBs from ABS.

Differences between URBs and ABS are Clear but Obscured by the Staff's Interpretation

Unlike ABS, which are supported by the cash flows generated by self-liquidating financial assets, URBs are supported by binding priority rights to certain of the utility's ongoing operating revenues or surcharges over the life of the bonds. URBs are, therefore, just another form of utility finance regulated by the states, which provide additional certainty of repayment for investors, utilities, and their customers.

In 1997, the Staff was direct and correct when it told prospective issuers that a URB is "much more analogous to a normal corporate debt offering where a corporation may vary prices for a product such that it may service its stated amount of debt and unlike a typical asset-backed offering where a discrete pool of receivables are securitized." At the same time, the SEC's Office of the Chief Accountant recognized that this right to impose and adjust a charge on unspecified individuals and businesses within a utility service

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of the securities to be issued. As a result, an ABS investor is insulated from the operational risk of the sponsor's or originator's business because self-liquidating financial assets in an amount that equals or exceeds the amount of the outstanding securities have already been originated, selected and transferred into the securitization.

In contrast, at issuance the amount of tariff charged and related collections supporting the URBs is zero and, following each payment date, that amount resets to zero (or, at most, a *de minimis* amount). This is because the tariffs and associated cash flows, which arise only in connection with the delivery of ongoing electric or gas services, are intended to represent only enough to service current payment obligations on the URBs, once again mirroring the sources of repayment of traditional utility corporate bonds. If utility operations are disrupted while the URBs are outstanding, the source of repayment of those bonds is disrupted. In contrast, if the operations of an ABS sponsor-originator are disrupted, the source of repayment of the ABS remains intact because the transaction is fully collateralized at all times.

[9] See Robert A. Fippinger, Peg Henry, and Ernesto A. Lanza, *The Securities Law of Public Finance* (Third Edition), Section 4:1.1 (SEC and Dodd-Frank Act Definitions of Asset-Backed Securities): "The definition of an Exchange Act ABS is codified in section 3(a)(79) of the [Exchange] Act and means 'a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset.' **A 'self-liquidating financial asset' is generally understood to mean a financial asset consisting of a contractual obligation that pays in full according to its terms** and is not subject to any contingency or future event or action. By their own terms, they are assets that convert into cash, such as loan repayments, without the necessity for active management of the pool of assets." (Emphasis added.)

territory was not a “financial asset” as commonly understood. This early guidance reflected a clear-eyed recognition of the essential economic characteristics of URBs.

When considered from a broader and more integrated perspective, URBs have far more in common with traditional corporate securities than with ABS. Only by adopting a narrow analytical framework—one that overlooks critical corporate attributes and disregards the operative definitions of ABS—can one reach the unsubstantiated conclusion that URBs are properly classified as ABS. But such a framework lacks both economic coherence and legal justification.

Accordingly, we believe the Staff's current binary classification framework, as expressed in its CDIs, oversimplifies the nature of URBs. The correct approach would acknowledge that URBs possess only limited structural features reminiscent of ABS, mainly that they are administered by the utility as a servicer. However, because repayment of URBs is tied to a specific, legislatively-authorized revenue stream (a surcharge on utility bills) their overall characteristics, economic substance, and functional role align with those of corporate utility debt.

This assessment also aligns with the view expressed by the Governors in their letter to the former Chairman of the SEC, which emphasized that categorizing URBs as ABS “defies common sense.” A more nuanced classification would not only more accurately reflect the reality of URBs but would also preserve consistency with the Staff’s historical guidance to utilize Regulation AB reporting forms where applicable—guidance that, critically, did not seek to redefine the fundamental nature of URBs as ABS.

Moreover, given the President’s Executive Order to eliminate regulations without any public benefit, the Staff should reconsider its current binary approach and instead adopt a more calibrated framework—one that reflects the preponderance of their corporate attributes, while acknowledging the very limited structural parallels to ABS. Such an approach would be both more faithful to the economic realities and more consistent with the SEC’s longstanding principles of investor protection and accurate disclosure.

Request for Specific Actions to be Taken by the Chair

We believe our concerns should have been far easier to resolve than the record to this point indicates and can be resolved administratively so no litigation would be necessary. We wish to work with the Chair and SEC to bring common sense and legal discipline to this area of the capital markets that affects millions of Americans' electric bills. Unlike other industries where consumers can avoid added interest and compliance costs by switching suppliers of whatever they are purchasing, a utility’s customers have no choice but to receive electricity from their utility and pay these added costs. As a regulated monopoly service provider, utility debt service is backed by their regulated ratebase, providing additional stability and certainty that lowers lender risk and should lower borrowing costs, not increase them. From the captive customer perspective, the potential for cost-savings resulting from URBs is often the primary motivation for states to adopt enabling legislation for these bonds, and for state utility regulators to allow and approve them.

We are also deeply concerned that the SEC or its Staff may classify URBs as ABS through this Concept Release even though they do not meet the principles set out in the adopted ABS definitions. The Concept Release makes statements of fact that are not accurate. If left unaddressed these errors will distort the record and become SEC policy. This would accelerate the adverse effect on electricity costs for millions of Americans by further confusing these corporate bonds with the complexity and risks of ABS.

For these reasons, we respectfully request a meeting with your personal staff and counsel with our counsel and advisors to discuss the Division Staff statements in the Concept Release. This will provide you the context for our concerns about the statements in the release and how they are inconsistent with the record.

Ultimately, we believe that the Chair and the SEC should remand this matter to the Staff with direction to:

1. Engage with state officials and stakeholders and respond to the detailed legal analysis provided to the Staff at their request;
2. Comply with the President's Executive Order 14192 and
    a. Withdraw the recent CDIs that rely on circular reasoning in reclassifying URBs as ABS; and
    b. Restore a classification framework for URBs that accurately reflects their nature as predominantly corporate in nature either by allowing disclosure on ABS Forms SF-1/SF-3 to this effect or
    c. advise registrants to use corporate Form S-1/S-3.

We are hopeful that our outreach to you will reset discussions with the Staff and enable renewed constructive engagement on what otherwise should be a straightforward matter.

For all of the reasons set forth in this letter, we respectfully request an opportunity to meet on these questions and concerns, in order that the Commissioners have a more complete record on which to consider our request to remand this matter to the Staff for action consistent with SEC guidance.

Sincerely,

Governor Jared Polis
State of Colorado

Floyd B. McKissick, Jr
Commissioner, North Carolina Utilities Commission
Chair, National Association of Regulatory Utility Commissioners (NARUC) Committee on Consumers and the Public Interest

David Springe
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