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January 24, 2020

Jay Clayton
Chairman
U.S. Securities & Exchange Commission
Via Electronic Mail (rule-comments@sec.gov)
100 F Street, N.E.
Washington, DC 20549-1090

Re: Interim Response to Request for Public Input on Asset-Level Disclosure Requirements for Residential Mortgage-Backed Securities

Dear Chairman Clayton:

The Housing Policy Council[1] deeply appreciates your recent request for public input on the SEC's asset-level disclosure requirements for residential mortgage-backed securities. Addressing the challenges with the current regulation is a critical step to restoring an SEC publicly-registered residential mortgage-backed securities market, which itself is needed to add liquidity to residential housing finance and to reduce reliance on taxpayer-backed financing structures.

The Housing Policy Council sees revisions to this regulation as one of several necessary administrative reforms for restoring the private-label securitization market. Last June, the Housing Policy Council publicly called for the sort of review you have initiated. We publicized our concern with an op-ed, published in the *American Banker* (see attached), which noted that "[p]ublic registration and disclosure of the details of asset-backed securitization is essential to market transparency and liquidity." We emphasized that the Regulation AB II disclosure requirements include elements that are difficult, if not impossible, to fulfill. Some of the data definitions are subject to interpretation, which would render the information inconsistent across securities. Some required data is not relevant from a credit risk perspective. And, finally, a number of data elements are not readily available. As a result, Reg AB II has become a barrier for issuers and investors, and we have seen no publicly registered mortgage-backed securities deals since the

[1] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families.

crisis. This market constraint provides a significant competitive advantage to Fannie Mae and Freddie Mac, given their exemption from the regulation.

Since the publication of your request for public input, members of the Housing Policy Council have been hard at work developing a detailed, thoughtful response. We have engaged other trade associations in our discussion of the issues, so that we may together develop a more industry-wide response.

Since your request did not specify a deadline, we thought it appropriate to inform you that we have taken your request quite seriously and that we anticipate delivering a detailed response in the month of February. We appreciate that the SEC open-ended comment period allows us the time necessary to work closely with our members and the other trade associations to develop and provide you with a detailed, actionable response.

Thank you again for initiating this public comment period and we look forward to working with you and the staff at the SEC to help get the publicly traded market for residential mortgage-backed securities re-opened. In the meantime, we would be glad to answer any questions you or the SEC staff may have or to provide an interim briefing on the scope and progress of our work.

Yours truly,

Edward J. DeMarco

Edward J. DeMarco

cc: Elad L. Roisman, Commissioner, U.S. Securities & Exchange Commission

AMERICAN BANKER

THREE WAYS TO DRAW PRIVATE CAPITAL BACK INTO MORTGAGES

Edward DeMarco
June 14, 2019

Since the financial crisis, taxpayers have been the primary source of capital supporting Fannie Mae and Freddie Mac and the broader mortgage market. Virtually everyone agrees that this arrangement should stop — but legislative compromise remains elusive. While bigger picture reform is debated, regulators should take steps today to rebalance public and private risk in the mortgage sector.

With three targeted actions, regulators can promote the return of private capital and expand access to credit.

First, the Consumer Financial Protection Bureau's ability-to-repay and qualified mortgage rule implements an important provision of the Dodd-Frank Act: Lenders must evaluate and document a borrower's ability to repay the loan. The law also defines a category of safe lending products, called qualified mortgages, that are presumed to fulfill ability-to-repay. The qualified mortgage designation was intended to discourage lenders from offering mortgages with riskier features, like "no-doc" and "low-doc," interest-only and negative amortization.

Unfortunately, the CFPB added to the law's product restrictions a debt-to-income test that required bureau-issued guidelines to define income and debts. Because the CFPB recognized that this added requirement was going to be problematic, it created a large loophole, deeming all loans eligible for delivery to government-sponsored enterprises Fannie Mae and Freddie Mac as qualified mortgages. This special privilege, the "GSE patch," tilted the playing field toward these companies, which are supported by taxpayers, and away from privately capitalized lenders.

The CFPB's own assessment of the rule earlier this year noted the imbalance created by the current rule — and leveling this playing field is step one.

The good news is that the rule can easily be fixed by simply removing the bureau's add-ons. The CFPB could eliminate the debt-to-income limit and the associated problematic guidelines (Appendix Q) and GSE patch, while retaining the mandate that lenders assess and document a borrower's ability to repay the mortgage.

The law authorizes, and the rule today includes a safe harbor protection from legal liability based on the mortgage's rate and fees. This mortgage price reflects the lender's overall assessment of risk, balancing positive and negative credit risk factors, including factors specifically pertaining to borrower ability to repay. This safe harbor benefit is granted only to low-risk qualified mortgages and should be maintained.

Bottom line, CFPB can easily remove the distortive features of the current regulation that have driven more mortgages to Fannie Mae and Freddie Mac and stifled private market participation. These simple fixes to the regulation would reduce reliance on and concentration of risk within Fannie Mae and Freddie Mac while preserving consumer protections and increasing credit access.

The second step belongs to the Securities and Exchange Commission. Public registration and disclosure of the details of asset-backed securitization is essential to market transparency and liquidity. Yet the SEC's Regulation AB II includes elements that are difficult, if not impossible, to fulfill because the data definitions in the rule are unclear, certain required data is not relevant and other data elements are not readily available. As a result, Reg AB II has become a barrier for issuers and investors, and we have seen no publicly registered mortgage-backed securities deals since the crisis. Here again, the field tilts toward Fannie and Freddie, since they are exempt from this requirement.

Fortunately, we already have a market test of what a sound disclosure regime should look like. Post-crisis, private-label securitization has been done under the SEC's 144A rule for privately placed offerings. An examination of these deals reveals a common set of disclosure benchmarks from which the SEC could reformulate aspects of Reg AB II.

Meanwhile, the loan level disclosures made by Fannie Mae and Freddie Mac should also be examined to bring them into alignment with the rest of the market. In other words, the outcome of such an analysis should be that the FHFA expands the GSEs' disclosures to match those of the non-GSE market. Again, eliminating a special exemption granted to Fannie Mae and Freddie Mac would level the playing field.

The third step is ensuring market participants have the data needed to make sound credit judgments.

During conservatorship, Fannie Mae and Freddie Mac have continued to amass mortgage performance data unavailable to other market participants — but only about half of it is disclosed as part of credit risk sharing initiatives. As a result, the information available to the GSEs to analyze and price risk provides a substantial competitive advantage. This gap will continue to inhibit the return of private capital to compete with the GSEs.

Therefore, the last administrative step goes to Federal Housing Finance Agency. Making the GSEs' full loan performance and collateral data public presents a significant opportunity for private stakeholders, from investors, lenders and ratings agencies to academics and consumer advocates, to analyze credit risk and loan performance for a much broader array of mortgage products than has been available to date. Even better, by reducing market uncertainty, access to credit should improve for consumers.

Taken together, these three administrative actions would enhance the readiness and willingness of private capital to replace taxpayers as the key capital providers supporting mortgage finance. And it would improve credit access for consumers.

What are we waiting for?