



MORTGAGE BANKERS ASSOCIATION

October 21, 2019

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Securitization Safe Harbor Rule¹

Dear Chairman McWilliams:

The Mortgage Bankers Association (MBA)² respectfully submits our comments on the Federal Deposit Insurance Corporation's (FDIC) notice of proposed rulemaking (NPR) to revise the Securitization Safe Harbor Rule (Rule). If implemented, we believe the proposal would remove important barriers to the issuance of private (non-agency) residential mortgage-backed securities (RMBS) without jeopardizing the safety and soundness of RMBS sponsors or diminishing investor protections.

The proposal aims to align the Rule's disclosure requirements with current Securities and Exchange Commission (SEC) standards. The Rule, as amended in 2010, requires insured depository institutions (IDIs) sponsoring certain securitizations to comply with the loan-level disclosure requirements of the SEC's Regulation AB³ in order to protect financial assets transferred as a result of a securitization agreement. The Rule applies both to registered (public) and non-registered (private) offerings. This requirement was consistent with the amendments to Regulation AB then being proposed by the SEC, which would have required privately-offered securitizations eligible for resale under Rule 144A of the Securities Act of 1933, as amended (144A issuances), as well as securitizations sold privately pursuant to Rule 506 of

¹ 84 FR 43732, "Securitization Safe Harbor Rule," August 22, 2019. Available at: <https://www.federalregister.gov/documents/2019/08/22/2019-15536/securitization-safe-harbor-rule>.

² The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, DC, the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, credit unions, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

³ 17 CFR Subpart 229.1100, "Asset-Backed Securities (Regulation AB)."

Regulation D (Regulation D issuances), to be subject to the same disclosure requirements as public offerings. When the SEC amended Regulation AB in 2014, those amendments did not require Rule 144A issuances or Regulation D issuances to have the same disclosure requirements as public offerings. The Rule was not amended in a similar fashion by the FDIC, however, creating disparities between the FDIC and SEC disclosure requirements for private offerings.

The NPR, if adopted, would remove the requirement in the Rule that private offerings sponsored by IDIs include disclosures satisfying Regulation AB, thereby aligning disclosure requirements between the FDIC and the SEC. Such alignment would establish greater consistency for securitization disclosures across varying types of sponsors, which in turn would facilitate a more level playing field throughout the market.

Over the past decade, the private RMBS market has been largely dormant, leaving a void in the housing finance system that has been filled primarily by government-backed sources of capital. While private capital continues to support home financing through sources such as portfolio lending, mortgage insurance, and credit risk transfer programs, the lack of a vibrant private RMBS market has limited the options available to reduce taxpayer exposure to mortgage credit risk. A more robust private RMBS market would increase the diversity of housing finance capital sources, making the system more resilient and promoting greater liquidity, while also lowering costs and improving choices for borrowers.

MBA echoes the sentiments expressed in the NPR regarding the need for a safe, sustainable private RMBS market. Any increase in private RMBS issuance should occur with appropriate regulatory oversight to ensure that borrowers, investors, and other market participants are not subject to undue risk. Securitization structures should be transparent and foster aligned incentives across the various parties to the transaction. Detailed and accurate disclosures are an important component of this framework, and IDIs should be full participants in the reemergence of this market.

The current securitization disclosure requirements of Regulation AB for RMBS, however, have been an insurmountable barrier to issuance in public RMBS transactions. MBA is not aware of any public RMBS offerings in the United States since the application of the SEC's 2014 amendments to Regulation AB governing RMBS transactions. The reason for this complete absence of public RMBS issuance is readily apparent. Many of the 270 asset-level data elements required to be disclosed under Regulation AB for RMBS are poorly defined (e.g., back-end debt-to-income ratio) or unavailable (e.g., appraisals, automated valuation model results and credit scores obtained by *any* transaction party or its affiliates). In many cases, data elements do not follow the standards set forth by the Mortgage Industry Standards Maintenance Organization (MISMO). In the case of the data element for the property

location, investors demand more detail than can be provided on the SEC's EDGAR website and there are no means to provide that more specific detail in a public RMBS offering without incurring securities law liability. Given these barriers to issuance, it is clear why RMBS are only being offered in the United States in private offerings. The private market has also been impaired by the Regulation AB disclosure requirements, as these requirements have significantly and unnecessarily limited the number of private RMBS transactions sponsored by IDIs for many of the same reasons.

MBA believes RMBS transactions should be governed by disclosure standards that produce detailed, consistent and accurate information for investors, while also ensuring this information is easily determined and readily available to be provided by issuers. Disclosure standards that meet these objectives would remain in place even if the Regulation AB requirements were removed for private securitizations sponsored by IDIs. Outside of the requirement for compliance with Regulation AB, the Rule contains other disclosure requirements that will be unchanged if the revisions in the NPR take effect. These disclosure requirements include numerous data elements addressing the structure of the securitization, the loan-level characteristics of the underlying assets, the performance of the underlying assets, representations and warranties, policies governing delinquencies, and compensation paid to various parties, among others.⁴ This information, which generally has been required by investors in non-IDI-sponsored RMBS transactions since the financial crisis, will allow for thorough investor diligence while facilitating compliance by IDI sponsors.

MBA supports the NPR, as it strikes an appropriate balance regarding the required disclosures and would eliminate a barrier for IDIs that wish to enter the private RMBS market. Aligning the Rule with the SEC's implementation of Regulation AB has many potential benefits, such as encouraging increased participation in the private RMBS market, promoting harmonized regulatory requirements across federal agencies, and increasing liquidity in the secondary mortgage market, which ultimately leads to lower costs for homeowners across the country. The proposal, together with more favorable regulatory capital treatment for RMBS sponsored by IDIs, could promote a substantial increase in private RMBS transaction participation by IDIs and the associated desired effects.

We appreciate the opportunity to comment on the potential revisions to the Rule and we look forward to continued engagement with the FDIC on all matters related to housing finance. Thank you in advance for your consideration of these comments. Should you have questions or wish to discuss further, please contact Sasha Hewlett, Director of Secondary and Capital Markets, at (202) 557-2805 and shewlett@mba.org.

⁴ 12 CFR Section 360.6(b)(2)(i)(B-D) and 12 CFR Section 360.6(b)(2)(ii).

RE: Securitization Safe Harbor Rule
October 21, 2019
Page 4 of 4

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Mills". The signature is written in a cursive style with a large, looping initial "P".

Pete Mills
Senior Vice President
Residential Policy and Member Engagement
Mortgage Bankers Association