

Private Mortgage Market Investment Act

GOAL – Ensure robust private investment in our nations' mortgage market without having American taxpayers on the hook.

I. Facilitate Continued Standardization/Uniformity

Issue: Fannie Mae and Freddie Mac provide a uniform set of underwriting standards for the securitization marketplace as well as standardized rules in the area of loan servicing and put-backs. This standardization allows investors to fully understand the: 1) credit characteristics of the loans making up the securitization pool and 2) legal documents governing the securitization.

Issue: The To-Be-Announced (TBA) market is a forward market for U.S. mortgages. It allows homebuyers to lock in rates on mortgages and facilitates additional liquidity in the secondary mortgage market. The TBA market is able to function because of several things: 1) the homogeneity of the credit characteristics of the mortgages included in the security, 2) the SIFMA Good-Delivery Guidelines that specify the trading and settlement-related market practices for TBA trading of Mortgage-Backed Securities (MBS), and 3) an exemption from the registration requirements of the Securities Act of 1933 for the issued securities.

Solution: By establishing standard underwriting criteria for a number of categories of mortgages and creating uniform legal documents that govern the securities, investors with varying credit appetites will be able to purchase securities with the level of credit risk they are comfortable with. Also, the standardization of these categories, the documents governing them, and an exemption from registration requirements will greatly increase the liquidity of these securities and aid the creation of a non-Agency TBA market. This additional liquidity will increase investor demand and lower mortgage rates for potential homebuyers.

- Directs FHFA to create several categories of mortgages that will each have their own unique uniform underwriting standards. Each category will vary in the amount of credit risk it contains to meet the varying risk appetites of different investors.
- Directs FHFA to develop standard model Securitization Agreements (e.g., Pooling and Servicing AND Purchase and Sale) for RMBS transactions, which will include standard representations and warranties. Standardizing these legal documents will facilitate more robust investment in this market by providing investors and all other market participants with the clarity and legal certainty they need to invest in this new market.
- Allows for securities that meet the above underwriting criteria and have the standard Securitization Agreements to be exempt from the securities registration process. An exemption from Securities Act registration will allow for the securities to be eligible for a private TBA market.
- Provides FHFA with the authority to approve the eligibility of issuers into this market and the ability to ensure the loans included in the securities meet the underwriting guidelines they put into each category.
- Strikes Section 941 (Risk-Retention) of the Dodd-Frank Act. The Risk-Retention rule-writing has proved overly cumbersome and counterproductive. Appropriate risk-retention is better achieved through standardizing and clarifying the issuer representations and warranties.

II. Ensure Rule of Law/Legal Certainty

Issue: In the aftermath of the bursting of the housing bubble, many investors in mortgage-backed securities have had a tremendous amount of difficulty coming to an agreement with other parties in the process on what restitution they are entitled to. In many cases, investors believed they had certain rights and priority of claim, only to have other parties bring those rights into question. Because of this, many investors are hesitant to participate in the mortgage market again unless they feel certain that the law is clear and that their rights will be upheld.

Solution: To bring private investment back to our mortgage market, it is essential that the rule of law is clear, specific, and upheld. Investors' rights and contracts must be honored. By facilitating the adjudication of disagreements between investors and issuers, clarifying the rules around the rights of 1st lien holders, and preventing government-forced loan modifications that negatively impact investors, investors will finally have the certainty they need to re-enter and invest in our nations' housing market.

- Prohibits servicers from owning a 2nd lien when they are servicing the 1st lien of the same mortgage. This will reduce conflicts of interest between servicers and investors and better align the incentives of all of the parties in the transaction.
- Protects 1st lien holders from increased risk associated with a 2nd lien by allowing the 1st lien lender to price for the additional risk that a new 2nd lien adds to their investment. This will allow for 1st lien holders to more accurately price for the credit risk on the original loan.
- Establishes a process for arbitration on any disagreements between investors and issuers on Reps and Warrants. This will facilitate the resolution of any conflict between mortgage market participants and reduce the legal costs and time delay associated with adjudicating such problems in state or federal courts.
- Prevents regulators from unilaterally forcing investors to reduce the principal of loans they have invested in. Investors, borrowers and issuers should be able to work together to modify mortgages as they deem appropriate but should not be forced to do so by a federal government agency without an explicit directive from Congress.
- Allows for the appointment of an independent 3rd party to act on behalf of and in the best interest of investors in mortgage-backed securities. This will be similar to current rules under the Trust Indenture Act which require a suitably independent and qualified trustee for corporate debt securities. It also allows investors to contract with an independent third party, who will access to the loan files, to monitor the performance of the loans and bring issues related to the loans to the attention of the Trustee.
- Removes the rebuttable presumption provision from the Qualified Mortgage (QM) definition to ensure a real and workable legal Safe Harbor for appropriate mortgages exists. Even if loans are made that comply with the current parameters of QM, all mortgage market participants would still possibly be subject to legal liability. This change will ensure that loans made to comply with QM are protected from additional legal liability and will foster additional investment in our mortgage market.

III. Provide Additional Transparency & Disclosure

Issue: In an attempt to bring as many deals to market as quickly as possible, many securitization deals were rushed out the door before the deal documents were completed and investors had a chance to adequately evaluate the loans underlying the securitization. This caused investors to rely heavily on the ratings that were given to the securitizations by the ratings agencies and created a disincentive for them to undertake their own due diligence.

Solution: Investors should be empowered and enabled to do their own analysis of the assets underlying the securities that they invest in. By disclosing more detailed loan level data while protecting borrowers' privacy and by allowing more time for investors to study the additional information, investors will be able to conduct more due diligence and lessen their reliance on the rating agencies.

- Increases the quality of the loan-level information and the disclosures that investors can use to evaluate the value of the mortgages. Investors will be able to better understand what they are investing in and be able to conduct proper due diligence before making their investment.
- Requires a 5-day cooling off period between when a deal is underwritten and when it can formally be sold. This will ensure investors have sufficient time to review and analyze disclosed information before making investment decisions.
- Increases pricing transparency by disclosing pricing history on securitization deals by requiring TRACE to disseminate pricing information on all reported ABS trades. By disseminating this pricing information, there will be better clarity and understanding for all market participants on the actual valuation of securities that are bought, sold, and traded in this market.
- Requires the creation of an individualized marker for each loan within a securitization. This will allow borrowers and other market participants to more easily know and track the actual performance of each individual loan.