Structured Finance Industry Group

June 7, 2019

Commissioner Brian Montgomery
U.S. Department of Housing and Urban Development
451 7th St. SW
Washington, D.C. 20410

Dear Commissioner Montgomery,

I am writing on behalf of the Structured Finance Industry Group (SFIG)[1] in response to the Federal Housing Administration's (FHA) Opportunity to Review and Provide Feedback on Currently Posted Drafts pursuant to FHA #19-18, posted on May 9, 2019. We appreciate FHA's leadership on this issue and welcome the opportunity to comment on the proposed changes in these drafts.

As a general matter, SFIG supports clarifications and changes that have as their intended effect increased lender participation in the FHA lending program, and we believe that the proposed changes to the certifications and defect taxonomy have that goal. Last year, SFIG supported the passage of bipartisan legislation that would provide guardrails around the use of the False Claims Act (FCA) in the context of rep and warrant disputes[2], and we continue to support changes that will provide lenders the clarity and certainty necessary to encourage their participation in the FHA market.

However, while SFIG supports the direction of these proposed changes, many of our members have expressed concerns that the proposals do not go far enough to alleviate legitimate concerns of potential legal liability arising under the FCA. They have expressed concerns that without additional provisions (such as a materiality qualifier or defect cure methodology) that would mitigate their liability, these proposed changes will be insufficient to encourage depository banks and other lenders that have traditionally operated in the FHA space to re-enter the FHA market.

SFIG expects that these shortcomings under the proposed changes will directly impact primary market lenders and borrowers. Therefore, at this time, we will not delve into the specific changes proposed in the certifications or defect taxonomy. We defer to our members who operate in primary markets to voice these concerns in more detail. Rather, we would like to highlight two specific areas of concern for the secondary market. We believe that these concerns fall within SFIG's purview across the secondary market and may be areas which would otherwise be overlooked as policymakers contemplate changes.

[1] SFIG is a member-based, trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. SFIG provides an inclusive network for securitization professionals to collaborate and, as industry leaders, to drive necessary changes, be advocates for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. Members of SFIG represent all sectors of the securitization market, including issuers, investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers, and trustees. Further information can be found at www.sfindustry.org.

[2] SFIG letter supporting "Fixing Housing Access Act", sponsored by Rep. Gottheimer (D-NJ) and Rep. Zeldin (R-NY). http://www.sfindustry.org/images/uploads/pdfs/Letter_of_Fixing_Housing_Access_Act_Gottheimer_6.1.18_SFIG_Final.pdf

1) Ensuring a Diverse FHA Lending Base Increases Optionality for Housing Finance Reform

Recent administrative and legislative proposals have contemplated changes to the structure and operation of Fannie Mae and Freddie Mac (the GSEs), to the Consumer Financial Protection Bureau's (CFPB) Qualified Mortgage (QM) Rule, and to the overall role of private capital in the secondary market. As the secondary market is an interrelated ecosystem comprised of many different market participants and stakeholders, changes in one area of the market will necessarily affect other areas of the market, and some contemplated changes may affect the volume of FHA-guaranteed loans. Should policymakers choose to make decisions that would lead to an increased volume of loans receiving FHA backing, FHA leadership must take the necessary steps in advance to keep the program on stable footing in the future. Such changes include ensuring that the FHA program is supported by a wide and diverse variety of lenders—including depository banks-- who can continue operations throughout all market cycles. Failing to take these necessary steps will limit the options for housing finance reform in the future.

2) Ensuring a Diverse FHA Lending Base Benefits Investors in Ginnie Mae Securities

Recently, Ginnie Mae has undertaken a series of initiatives to limit the practice of "churning", which have included proposed changes to the eligibility requirements of the Ginnie II multi-issuer security[3] and interfacing directly with lenders in the VA program[4]. These changes have been based on observed differences in the prepayment speeds of certain loans, which have caused Ginnie II securities to be priced worse than comparable Fannie Mae securities. Ginnie Mae leaders have stated that various program changes may be appropriate in order to maintain investor confidence in these securities, and that such changes could include actions to ensure the counterparty strength of lenders participating in the Ginnie multi-issuer program. Once again, having a wide variety of diverse FHA lenders—many of which have capital and liquidity requirements overseen by Federal regulators—will help Ginnie Mae establish and maintain a counterparty risk framework that ensures investor's interests are protected, and which will ultimately benefit the borrowers in the form of lower rates across all government-lending programs.

SFIG reiterates our support for the initiatives that HUD and FHA are undertaking with respect to loan level certifications, annual certifications, and the Defect Taxonomy. However, we feel it is our responsibility to highlight for policymakers where more work may be needed in order to attract more lenders to the FHA market. At the same time, we fully support the government's vital role in regulating lenders by establishing provisions such as materiality qualifier or defect cure methodology, and prosecuting bad actors whose actions fall outside of such boundaries. SFIG would be happy to serve as a resource as policymakers seek to balance the goal of protecting borrowers with the goal of encouraging lenders in the FHA program. We once again thank HUD and FHA for their leadership on this issue, and respectfully submit our comments.

Dallin Merrill
Senior Manager, MBS and CMBS Policy
Structured Finance Industry Group

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[3] Request for Input on Pooling. April 26, 2019. Available at https://www.ginniemae.gov/newsroom/publications/Documents/ginniemae_rfi_va.pdf?mod=article_inline

[4] *Ginnie Mae Notifies Select Market Participants to Take Corrective Action to Control 'Churning'* February 8, 2018. Available at https://www.ginniemae.gov/newsroom/Pages/PressReleaseDispPage.aspx?ParamID=129