

August 27, 2025

Consumer Financial Protection Board
700 G Street NW,
Washington, DC 20552

Federal Deposit Insurance Corporation
550 17th Street NW,
Washington, DC 20429

Office of the Comptroller of the Currency
400 7th Street SW,
Washington, DC 20219

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW,
Washington, DC 20551

Federal Housing Finance Agency
400 7th Street, SW
Washington, D.C. 20219

National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: Request for interpretive guidance under the Final Rule on Quality Control Standards for Automated Valuation Models (AVM)

To whom it may concern,

The Structured Finance Association (SFA) is writing to request interpretive guidance with regard to issues arising under the final rule (AVM Rule) on Quality Control Standards for AVMs.¹

This letter requests interpretive guidance under the AVM Rule. This letter is a formal request for an Advisory Opinion from CFPB, made in compliance with applicable CFPB requirements. This letter also is a formal request to OCC for an Interpretive Letter and to FRB for a Legal Interpretation.

The SFA's purpose is to help its members and public policymakers grow credit availability and the real economy in a responsible manner². The SFA has a distinct focus upon the health and function of the secondary markets for residential mortgages, one of the most vital financial markets impacting the US consumer and real economy on a daily-basis. SFA members include all types of securitization market participants across various asset types, including residential mortgage-backed securities issued by non-GSE entities, also known as private label mortgage-backed securities or PLMBS. SFA members include broker-dealer entities that act as underwriters and/or initial purchasers (collectively, underwriter(s)) in PLMBS initial offerings, which generally are made pursuant to Rule 144A under the Securities Act of 1933.

As described further in this letter, the underwriter role in PLMBS offerings does not include using AVMs to make a new determination of collateral value in connection with a secondary market transaction. Any such usage and determination would be made by the sponsor. These broker-dealer entities are concerned that the breadth of the language in the AVM Rule could impose on them an independent duty to adopt quality control standards as mandated by the AVM Rule, even though such duty would fall on and should be satisfied by the sponsor.

¹ Quality Control Standards for Automated Valuation Models, Adopting Release, 89 Fed. Reg. 64538 (August 7, 2024).

² The SFA is a consensus-driven trade association with over 370 institutional members representing the entire value chain of the United States securitization market. By facilitating responsible issuance and investing of loans and securities, the market provides trillions of dollars of capital to consumers and businesses in communities across the country. SFA members include issuers and investors, broker-dealers, rating agencies, data analytic firms, law firms, servicers, trustees, and accounting firms.

In seeking an Advisory Opinion from CFPB, SFA is not acting on behalf of any specific member, but rather is seeking interpretive guidance for the benefit generally of members who act as underwriters in PLMBS initial offerings. None of the information included in this letter is confidential. The issue on which interpretive guidance is sought in this letter is, to our knowledge, not the subject of any known or reasonably knowable active litigation or Federal or State agency investigation.

Background

The AVM Rule was adopted in August 2024 by six participating federal agencies: (1) Office of the Comptroller of the Currency (OCC); (2) Board of Governors of the Federal Reserve System (Board or FRB); (3) Federal Deposit Insurance Corporation (FDIC); (4) National Credit Union Administration (NCUA); (5) Consumer Financial Protection Bureau (CFPB); and (6) Federal Housing Finance Agency (FHFA). The AVM Rule implements the requirements of Section 1473(q) of the Dodd-Frank Act, which amended title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA or title XI) to add a new section 1125 relating to quality control standards for AVMs used in valuing real estate collateral securing mortgage loans (section 1125).³ The final rule is set to become effective on October 1, 2025.

The CFPB version of the rule generally applies to the use of AVMs by mortgage originators or secondary market issuers, who are not either (1) an insured financial institution or (2) a subsidiary owned by an insured financial institution and regulated by OCC, FRB, FDIC or NCUA.⁴ SFA members who are PLMBS underwriters frequently are broker-dealers that are bank holding company non-bank subsidiaries, and that themselves are not directly regulated by OCC, FRB, FDIC or NCUA.

The AVM Rule implements quality control standards for AVMs used by mortgage originators and secondary market issuers for valuations for certain mortgages secured by a consumer's principal dwelling. The AVM Rule defines a secondary market issuer as a party that "creates, structures, or organizes a mortgage-backed securities transaction".⁵ The requirements of the AVM Rule apply to these secondary market issuers' use of an AVM in determining the value of an individual's principal dwelling in connection with making a covered securitization determination. A "covered securitization determination" is "a determination regarding (1) whether to waive an appraisal requirement for a mortgage origination in connection with its potential sale or transfer to a secondary market issuer; or (2) structuring, preparing disclosures for, or marketing initial offerings of one or more mortgage-backed securitizations" (emphasis added).⁶ In the context of this definition, and consistent with the purpose and scope of the AVM Rule, we understand the word "determination" to mean the use of an AVM to determine the value of mortgage collateral.

However, the requirements do not apply to the use of AVMs in connection with:

1. Monitoring the quality or performance of mortgages or mortgage-backed securities;
2. Review of the quality of already completed determinations of the value of collateral; or
3. The development of an appraisal by a certified licensed appraiser.⁷

The AVM Rule itself is not entirely clear as to which participants in a securitization would be considered secondary market issuers subject to the requirements of the AVM Rule, and whether it was intended to cover only the "sponsor" of a securitization (as well as the issuing entity the sponsor utilizes to issue the securitization), or if it was intended to also include the "underwriter(s)" in a securitization.

We note that the AVM Rule applies to mortgage originators and secondary market issuers that engage in credit decisions or covered securitization determinations, subject to the applicable exclusions. The AVM Rule does not apply to other uses of AVMs, including a secondary market whole loan purchasers' use of AVMs in connection with a purchase decision.

³ 89 Fed. Reg. 64538, at 64561.

⁴ 12 CFR § 1026.42(i)(1) (effective October 1, 2025). All references in these footnotes to AVM Rule sections are to the CFPB version of the final AVM Rule.

⁵ 12 CFR § 1026.42(i)(2)(vii).

⁶ 12 CFR § 1026.42(i)(2)(iii).

⁷ 12 CFR § 1026.42(i)(1)(i)-(iii).

Requested Relief

An Advisory Opinion from CFPB, [and an OCC Interpretive Letter and an FRB Legal Interpretation,] as well as concurrence from the other agencies, to the effect that an underwriter in a PLMBS issuance is not a “secondary market issuer” and an underwriter’s participation in PLMBS does not involve any “covered securitization determinations” such that an underwriter does not have any independent duty to comply with the AVM Rule, provided that the underwriter does not itself directly use an AVM to determine a new value for any mortgage collateral.

Discussion

As discussed above, broker-dealer entities that act as underwriter in PLMBS offerings are concerned that the breadth of the language in the AVM Rule could impose on them a duty, independent of the sponsor’s duty, to adopt quality control standards as mandated by the AVM Rule, if the securitization involves the use of AVMs to generate a new value for mortgage collateral. This concern stems from the definition of “secondary market issuer”, as well as language in the AVM Rule to the effect that a secondary market issuer that engages in “covered securitization determinations themselves, or through or in cooperation with a third-party or affiliate” must comply with the AVM Rule by independently adopting quality control standards.

Roles of sponsor and underwriter

In PLMBS as well as other types of securitizations, the term “secondary market issuer” is not used outside of the context of the AVM Rule. Instead, the roles of the two primary participants in a securitization offering are “sponsor” and “underwriter”.

Key federal securities laws applicable to securitizations use the term “sponsor” to identify the party that is responsible for causing the issuing entity to issue the securitization. In a securitization it is important to distinguish between the sponsor, and the issuing entity, because the sponsor is an operating company or other entity capable of exercising discretion, whereas the issuing entity is a special purpose vehicle formed to issue the securitization that is controlled by the sponsor. Under the final Credit Risk Retention (CRR) rules, which were mandated by Section 15G of the Securities Exchange Act of 1934 (as added by the Dodd-Frank Act), the entity primarily responsible for complying with the rules is the sponsor of the securitization.⁸ The CRR rules apply to all asset-backed securitizations unless an exemption applies, and define “sponsor” as “a person who organizes and initiates a securitization transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity.”⁹ A similar definition is found in Regulation AB, which applies to all asset-backed securitizations in an offering registered with the SEC. Regulation AB defines “sponsor” as “the person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity.”¹⁰ (emphasis added.)

Also note the following key provision in the adopting release for the CRR Rules: “[t]he sponsor is the party that organizes and initiates a securitization transaction and actively participates in the organization and initiation activities that would be expected to impact the quality of the securitized assets underlying the asset-backed securitization transaction, typically through underwriting and/or asset selection.”¹¹

The underwriter of a securitization typically performs the same function in a securitization transaction as in other securities transactions, namely purchasing the securities directly from the issuer and marketing and selling them to investors. The underwriter in a PLMBS transaction is generally not responsible for preparing the offering disclosure. The sponsor and its counsel prepare the offering documents for PLMBS transactions and the sponsor or its affiliates would order any AVMs required for preparing the disclosure (should those AVMs even be necessary in the first place). In a PLMBS, the underwriter relies on the sponsor of the securitization with respect to factual matters in the disclosure. The sponsor bears the full and ultimate responsibility for preparing the disclosure, including obtaining any valuations with respect to the underlying mortgaged properties and performing LTV calculations. The underwriter will then rely on this disclosure in marketing the securities and will enter into an agreement with the sponsor whereby it receives numerous representations and warranties and indemnification from the sponsor.

⁸ Credit Risk Retention (Regulation RR), 12 CFR 244.3(a) (December 24, 2014). All references in these footnotes to Regulation RR sections are to the FRB version of the final rules.

⁹ 12 CFR 244.2 “Sponsor”.

¹⁰ Regulation AB, 17 CFR 229.1101(l) (2005).

¹¹ Credit Risk Retention (Regulation RR), Adopting Release, 79 Fed. Reg. 77742 (December 24, 2014).

In PLMBS, as in other types of securitizations, the underwriter role typically includes some degree of structuring, in the sense of making recommendations to the sponsor as to the relative sizes, interest rates, payment and loss priorities, and other key terms of the various classes of securities to be offered. It is normal for the underwriter to perform this role, given that cash flow and projected loss modelling is a key skill set that the underwriter contributes to the transaction, as well as the underwriter's role in interfacing directly with prospective investors. However, this type of structuring activity does not in any way involve a determination of the values of the collateral for the loans. Instead, the underwriter relies on loan level data inputs (including LTV) provided by the sponsor, with the benefit of diligence reports provided by independent third-party review firms (TPRs) as described below. The ultimate responsibility for making structuring determinations lies with the sponsor, not the underwriters.

Definition of secondary market issuer

The authorizing statute for the AVM Rule, Section 1125 of FIRREA, uses but does not define the term “secondary market issuer”. As noted above, the AVM Rule defines this term as “any party that creates, structures, or organizes a mortgage-backed securities transaction,” and this definition is the same in both the proposing release¹² and in the adopted final rule.¹³ While the words “creates” and “organizes” in the AVM Rule are generically similar to the terms “organizes and initiates” in the securities law sponsor definition, the addition of the term “structures” in the AVM Rule creates confusion. This confusion also has the real effect of potentially stalling certain transactions in the residential mortgage securitization markets if guidance is not received in the near term.

The proposing release references the proposed definition and contains this language:

“The agencies propose to define secondary market issuer in this manner due to the statutory focus in section 1125 on “issuers” and “determin[ing] the collateral worth” of a mortgage... A number of parties may be involved in the securitization process and this proposed definition is designed to ensure coverage of entities responsible for the core decisions required for the issuance of mortgage-backed securities, including making determinations of the value of collateral securing the loans in the securitization transaction.”¹⁴

While this language suggests that more than one party might be a secondary market issuer in a given transaction, the intent does not appear to be to extend the definition beyond parties acting as issuers and/or responsible for making determinations of the value of collateral.

Substantially similar language to the above appears in the adopting release, as follows:

*“A number of parties may be involved in the securitization process. **The proposed definition was designed to ensure coverage of entities responsible for the core decisions required for the issuance of mortgage-backed securities, including making determinations of the value of collateral securing the loans in the securitization transaction.**” (emphasis added)¹⁵*

While underwriters may be involved in providing structuring advice and recommendations, the “core decisions” regarding the transaction structure are not being made by underwriters, rather core structuring decisions are made by the transaction sponsor, who is the correct party to be designated as “secondary market issuer.”

It should be noted that a different section of the proposing release describes consideration of an alternative broader definition, which was not acted upon. In the proposing release, the discussion indicates that CFPB considered:

“...two alternative definitions of the term “secondary market issuer.” The first alternative would define the term to include only entities that issue asset-backed securities collateralized by mortgages (mortgage securities). The second alternative would define the term more broadly to mean an issuer, guarantor, insurer, or underwriter of mortgage securities.”¹⁶

¹² Quality Control Standards for Automated Valuation Models, Proposing Release, 88 Fed. Reg. 40638 (June 21, 2023).

¹³ See footnote 4.

¹⁴ 88 Fed. Reg. 40638, at 40646.

¹⁵ 89 Fed. Reg. 64538, at 64555.

¹⁶ 88 Fed. Reg. 40638, at 40651.

While this discussion indicates that CFPB considered the second, broader alternative language that would have included underwriters, CFPB ultimately agreed to the definition as proposed, which references “any party that creates, structures, or organizes a mortgage-backed securities transaction.” Moreover, the above discussion was not carried forward into the final rule. In other words, the CFPB considered but rejected language that would have included underwriters in the term “secondary market issuer”, before the proposing release was published.

It should also be noted that the definition of secondary market issuer was specifically intended to cover Fannie Mae and Freddie Mac (the GSEs). It is our understanding that the GSEs perform the structuring involved in their issuances of mortgage-backed securities. There is no indication that consideration was given to the role of the underwriter of a PLMBS offering, in choosing the words “creates, structures, or organizes” within this definition.

Uses of AVMs in PLMBS

The primary means of establishing the value of the collateral in a PLMBS transaction is by reference to an appraisal made at origination. AVMs are used in limited circumstances. In general terms, where AVMs are used in connection with a PLMBS transaction, these uses fall into four categories:

1. In connection with a PLMBS transaction, TPRs are engaged to diligence various origination characteristics of the mortgage loans and to monitor compliance with underwriting guidelines. For new originations, these TPRs conduct appraisal reviews to check the quality of an appraisal made at origination. AVMs are one of the methods used to check the quality of the original appraisal. AVMs in this circumstance are not used to derive a new value of the collateral for input to the loan-to-value (LTV) ratio or other information disclosed in the offering documents.
2. AVMs may also be used by the sponsor/issuer to confirm whether the LTV calculated based on the current value exceeds a threshold. For example, if the LTV at issuance exceeds 100%, this can create issues for the ERISA eligibility of the securities in certain types of PLMBS structures.
3. In some cases AVMs (or other valuation tools such as broker price opinions) may be used to derive a disclosed updated LTV based on current value. This practice is frequently used in connection with the securitization of seasoned loans such as reperforming loans, and securitizations of loans acquired through exercise of “clean-up calls” of previously issued PLMBS.
4. For second lien loans, in many cases AVMs (or other valuation tools) are used at origination to determine the CLTV (combined first and second lien LTV). In many instances, full appraisals are not obtained in connection with the origination of a second lien mortgage loan. For securitizations of second liens, including HELOCs, the AVM valuation obtained at origination by the originator may be used for purposes of calculating the CLTV at the time of origination as disclosed in the offering materials.

Of the above four use cases, the first falls squarely into the exception for a review of the quality of an already completed determination of value, that is the appraisal made at origination. The second falls within the exception for monitoring the quality or performance of mortgages, in that the AVM is used to determine whether the LTV is outside of a specified tolerance, and the AVM is not used to determine a new value that becomes an input into the disclosed LTV (which is based on the valuation at origination).

As to the third use case, the AVM is being used to derive a new value, but the sponsor (and not the underwriter) is solely responsible for making the resulting determinations of updated value and LTV that are reflected in the disclosure. The sponsor, and not the underwriter, will make representations and warranties as to the accuracy of the loan level data (including the updated LTV information) upon which the disclosure in the offering documents is based. In the fourth use case, either the originator or the sponsor as seller of the loans, and not the underwriter, will make representations and warranties for the benefit of investors as to the accuracy of the loan level data upon which the disclosure in the offering documents is based, including the CLTV information derived from the AVMs used at origination. While CLTV at the time of origination is disclosed to PLMBS investors, there is no new determination of value or credit decision being made at the time of securitization. In both of these cases, the underwriter does not participate in making the calculations that use the AVMs to make determinations of value, LTV, or CLTV at origination.

The adopting release discusses two examples of uses of AVMs by secondary market issuers, both with a GSE focus. The first of these is in connection with appraisal waivers provided by the GSEs.¹⁷ This occurs where a mortgage originator submits a loan to a GSE along with the originator's estimate of the collateral value (for a refinancing), with a request for an appraisal waiver. The originator itself does not make a determination of value. The GSE then obtains and uses an AVM in deciding whether to provide an appraisal waiver. The adopting release makes clear that in this circumstance, the GSE, and not the originator, is viewed as making a covered securitization determination. Furthermore, the originator has no responsibility for ensuring that the AVM used by the GSE to support the waiver meets the rule's quality control standards. While there is no corollary to this practice in PLMBS, the discussion sheds light on the meaning of "covered securitization determination" and on which party has responsibility for making such a determination.

The second example in the adopting release of use of by secondary market issuers is where a GSE has purchased a defaulted loan from a previously issued mortgage-backed security, and then modifies and re-securitizes the loan in a new offering.¹⁸ In these circumstances, the GSE may use an AVM to estimate the collateral value for disclosure purposes. The adopting release makes clear that AVMs used in this manner by the GSEs will be "considered covered securitization determinations because there are new or revised value determinations." The adopting release also makes clear that, consistent with the proposal, the final AVM Rule is generally intended to cover "AVM usage when a secondary market issuer uses an AVM as part of a new or revised value determination in connection with a covered securitization determination."

Duty to comply falls on PLMBS sponsor, not underwriter

The AVM Rule in effect requires that a secondary market issuer must comply with the quality control standards in the rule, if it engages in covered securitization determinations "themselves, or through or in cooperation with a third-party or affiliate."¹⁹ The proposing and adopting release do not directly clarify the meaning of "through or in cooperation with" in this context. However, the appraisal waiver example discussed above is illustrative. The mortgage originator in this example is not responsible for compliance as a result of the GSE's use of an AVM to determine whether to give an appraisal waiver (which benefits the originator), therefore this degree of involvement does not rise to the level the mortgage originator using the AVM either itself or "through or in cooperation with" the GSE.

As discussed above, in a PLMBS offering the roles and responsibilities of the sponsor and the underwriter are separate and distinct from each other. Where the sponsor is not an affiliate of the underwriter, the transaction is fully arms-length and is contractually adverse. Specifically, as to any determination of the value of mortgage collateral made by use of an AVM or otherwise and the resulting disclosed LTV or CLTV, the sponsor and not the underwriter is fully and solely responsible for making such determination. Similarly to the appraisal waiver example, the underwriter could not reasonably be considered to be making any such value determination through or in cooperation with the sponsor. Only the sponsor is making the determination. Therefore the underwriter is neither a "secondary market issuer" nor making any "covered securitization decision" and should have no independent duty to adopt quality control standards to comply with the AVM Rule.

In PLMBS offerings where the sponsor is an affiliate of the underwriter, the affiliated sponsor entity will have the duty to comply with any applicable requirements of the AVM Rule. The requested relief would not diminish any duty to comply with the AVM Rule that falls on the sponsor entity. In PLMBS transactions where the sponsor is an affiliate of the underwriter, the contractual relationship between the parties and their respective roles and responsibilities are documented similarly to how they would be where the parties are unaffiliated, including with respect to the sponsor being fully and solely responsible for any determination of the value of mortgage collateral made by use of an AVM. Therefore in such circumstances the underwriter should have no independent duty to adopt quality control standards, or otherwise comply with the AVM Rule.

Conclusion

In conclusion, the definition of "secondary market issuer" does not appear intended to extend beyond parties acting as issuers and/or parties responsible for making determinations of the value of collateral. Many uses of AVMs in connection with PLMBS are exempt from the AVM Rule, but in all cases the sponsor (and not the underwriter) is solely responsible for such usage. The roles and responsibilities of the sponsor and the underwriter are separate and

¹⁷ 89 Fed. Reg. 64538, at 64542.

¹⁸ 89 Fed. Reg. 64538, at 64543.

¹⁹ 12 CFR § 1026.42(i)(3).

distinct and the underwriters do not make any of the core decisions involved in structuring the PLMBS. When a sponsor uses an AVM to determine a new value of collateral, the underwriter cannot reasonably be considered to be making such determination through or in cooperation with the sponsor. If an underwriter is considered to be subject to the AVM Rule, we respectfully request that underwriters be entitled to rely on the quality control standards implemented by the sponsor, with appropriate due diligence, rather than being required to independently implement quality control standards on its own.

Based on the foregoing discussion, we respectfully request interpretive guidance that an underwriter in a PLMBS issuance is not a “secondary market issuer” and an underwriter’s participation in PLMBS does not involve any “covered securitization determinations” such that an underwriter does not have any independent duty to comply with the AVM Rule, provided that the underwriter does not itself directly use an AVM to determine a new value for any mortgage collateral.

Sincerely,

Dallin Merrill
Senior Director, MBS Policy
Structured Finance Association