



GEORGETOWN LAW

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Re: Request for comment on Asset-Level Disclosure Requirements for Residential Mortgage-Backed Securities

To Whom It May Concern:

I am a Professor of Law at Georgetown University Law Center in Washington, DC. I have previously written extensively on the private-label securitization market¹ and on mortgage servicing,² and have repeatedly testified before Congress on these topics.

I write now briefly regarding the SEC's request for comment on Asset-Level Disclosure Requirements for Residential Mortgage-Backed Securities. The motivation behind the request for comments is the absence of registered private-label RMBS offerings since 2014.

It is important to see the absence of registered private-label RMBS offerings contextually. It is part of a larger phenomenon of the decline of private-label RMBS offerings of all sorts since the financial crisis. Even since 2014, there have been relatively few unregistered private-label RMBS offerings (Rule 144A or otherwise). SIFMA data, for example, indicates that from 2104 through October 2019 there have been \$620.4 billion in non-agency RMBS issued. That is a very small issuance volume compared to pre-crisis levels; it is less than half the issuance volume in either 2005 or 2006, for example.

The reasons for this general decline in private-label RMBS issuance decline are numerous. First, there is continued investor wariness, particularly among investors seeking "safe" assets,

¹ *E.g.*, THE GREAT AMERICAN HOUSING BUBBLE: WHAT WENT WRONG AND HOW WE CAN PROTECT OURSELVES IN THE FUTURE (Harvard University Press, forthcoming 2020) (with Susan Wachter); *A Tale of Two Markets: Post-Crisis Regulation and Innovation in the Mortgage and Structured Finance Markets*, 2019 ILL. L. REV. (forthcoming 2019) (with William Bratton); *The Commercial Real Estate Bubble*, 2 HARV. BUS. L. REV. 801 (2013); *Explaining the Housing Bubble*, 100 GEO. L.J. 1177 (2012) (with Susan Wachter); *The Dodd-Frank Act and Housing Finance: Can It Restore Private Risk-Capital to the Securitization Market?* 29 YALE J. ON REG. 101 (2012) (with Andrey D. Pavlov & Susan M. Wachter).

² *E.g.*, *Mortgage Servicing*, 28 YALE J. ON REG. 1 (2011) (with Tara Twomey); *Rewriting Frankenstein Contracts: The Workout Prohibition in Residential Mortgage Backed Securities*, 82 S. CAL. L. REV. 1075 (2010) (with Anna Gelper).

of a market that performed terribly during the financial crisis. Second, there is a lingering concern about the enforcement of representations and warranties and other assorted servicing problems. In contrast, CMBS has a different servicing structure, such that it avoided the severe servicing problems that plagued RMBS, and the CMBS market has revived post-crisis. Third, the availability of GSE synthetic credit risk transfers (STACR and CAS credit-linked notes deals) has created a large alternative investment class for investors who want to take on credit risk on US mortgages without concern for representation and warranty enforcement. And fourth, the Dodd-Frank Act's risk retention requirement for securitization of non-Qualified Residential Mortgages (which are defined by rule as Qualified Mortgages under the CFPB's Qualified Mortgage rulemaking) has disincentivized issuance in private-label RMBS in general.

The instructive comparison—for which I lack data—is the post-2014 prevalence of registered offerings of other types of asset-backed securities. My sense is that their prevalence has all generally declined, which would likely reflect a general shift in debt offerings to unregistered Rule 144A markets. A difference-in-differences analysis would be helpful, if the SEC has the relevant data.

Even if there has been a greater decline in the percentage of private-label RMBS offerings that are registered relative to other types of ABS, the additional data field disclosure requirements are unlikely to be so burdensome as to materially shift the economics of registration. Filling out these fields requires only a small amount of time per loan. More significantly, perhaps are Reg AB's representation and warranty enforcement requirements, but that only speaks to the continued “lemons” nature of the private-label RMBS market in general, wherein investors cannot have confidence that their rights will be enforced.

In any event, it will be critical for the SEC to sort out the impact of Reg AB II from general factors that have led to a decline in private-label RMBS issuance of all sorts.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam J. Levitin". The signature is fluid and cursive, with a large loop at the end.

Adam J. Levitin