October 21, 2019

Robert E. Feldman
Executive Secretary
ATT: Comments/Legal ESS
Federal Deposit Insurance Commission
550 17th Street NW
Washington, DC 20429

RE: Securitization Safe Harbor Rule

To Whom It May Concern:

The Americans for Financial Reform Education Fund (AFR Education Fund) appreciates the opportunity to comment on the above referenced Notice of Proposed Rulemaking (the "NPRM") by the Federal Deposit Insurance Corporation ("FDIC") concerning the Securitization Safe Harbor Rule. AFR Education Fund is a coalition of more than 200 national, state, and local groups who have come together to advocate for reform of the financial industry. Members of AFR include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.[1]

The NPRM proposes to permit securitizations that do not comply with the asset-level disclosure requirements of the Security and Exchange Commission's Reg AB to be covered by the FDIC's Securitization Safe Harbor Rule, so long as such securitizations would not fall within the SEC's own definition of Reg AB coverage. This would allow private placement securitizations such as those issued under the SEC's Rule 144A or Rule 506 of Regulation D to qualify for the Securitization Safe Harbor Rule, meaning that the FDIC would not use its repudiation authority as the conservator of a failed bank to recover losses from such securitizations. Since being bankruptcy remote is a key selling point for asset securitizations, the practical impact here would be to make it much easier for banks to sponsor and market securitizations that did not comply with asset-level disclosure requirements that are valuable in underwriting the security.

The great majority of the mortgage securitizations that turned "toxic" and destroyed the financial system in the 2008 crash were private securitizations that would not have triggered Reg AB requirements under current rules.[2] The FDIC is thus proposing to facilitate bank sponsorship of the same class and type of securities that caused such enormous losses to the banking system ten

[1] A list of coalition members is available at: http://ourfinancialsecurity.org/about/our-coalition/

[2] Madrick, Jeff and Stephen Diamond, "A Modest Proposal for Capital Market Reform: Shut Down Rule 144a", Huffington Post, July 5, 2010. https://bit.ly/2MARp6r

years ago, without mandating the improved loan level disclosures designed to address opacity, inadequate market discipline, and poor underwriting practices that proved fatal to these markets in the past.

The justifications offered in the NPRM for taking this step are not convincing. One is "regulatory harmonization". However, the fact that the SEC bowed to industry pressure and limited the coverage of Reg AB does not require the FDIC to make the same mistake. AFR commented to the SEC at the time that the exclusion of private securitizations from Reg AB was a grave error, especially in the frequent cases where such private securitizations involved the most complex and opaque type of securities such as synthetic securitizations and re-securitizations.[3]

The role of the FDIC as the custodian of the deposit insurance fund and the role of the SEC as the general regulator of securities markets are completely different. It is entirely reasonable for the FDIC to take steps to ensure proper underwriting and market discipline for bank assets in order to protect the public from having to pay off losses related to FDIC insurance on bank liabilities, and in fact it is irresponsible to fail to take such steps. The SEC does not have any similar responsibility to avoid losses on publicly insured bank liabilities.

Another justification advanced in the NPRM is that in view of improved post-crisis regulations it is no longer necessary for the FDIC to safeguard against a "buildup of structurally opaque and potentially risky mortgage securitizations" in the banking system such as occurred in 2008. We wish we could be as sanguine about the effectiveness of post-crisis regulations. Improved capital and liquidity requirements do not in themselves protect against poor disclosure or underwriting practices for securitizations. New Qualified Mortgage rules, while helpful in underwriting individual mortgages, do not prevent the creation of mortgage securitizations that lack sufficient subordination to protect senior tranches from downgrades or losses. Only examining the relationship between borrower ability to repay, loan characteristics, and the overall structure of the securitization can address this issue. Crucial loan-level data for such analysis would no longer be available due to the changes proposed in this NPRM.

In sum, we urge the FDIC not to eliminate asset-level disclosure requirements for privately issued securitizations as a condition for providing a safe harbor for these securitizations against FDIC use of its repudiation authority.

Thank you for the opportunity to comment on this NPRM. If you have questions, please contact Marcus Stanley, AFR's Policy Director, at 202-466-3672 or marcus@ourfinancialsecurity.org

Sincerely,

Americans for Financial Reform Education Fund

[3] Americans for Financial Reform, "Response to SEC ABS Data Request", April, 2014. https://bit.ly/35TmD05