Congress of the United States
Washington, DC 20515

October 31, 2023

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chair Gensler:

We write to express our concerns regarding the Securities and Exchange Commission's (the Commission) proposed rule "Prohibition Against Conflicts of Interest in Certain Securitizations" (the Proposal). Working families are already enduring both a credit crunch and a housing crisis, and this proposed rule may make it even harder for our constituents to make ends meet. While we support the goal of preventing bad actors from taking advantage of conflicts of interest in securitization, as required under Section 621 of the Dodd-Frank Act, the Proposal goes far beyond this congressional mandate by outlawing many ordinary-course activities. If implemented, the Proposal's overly broad requirements could significantly curtail participation in the securitization market, a critical source of risk mitigation for our financial system and affordable credit for American households and businesses. This would increase the cost and reduce the availability of financing across our economy – including for auto, residential, and commercial real estate, and unsecured consumer loans – exacerbating the credit crunch sparked by high interest rates and rising prices. To avoid this economic harm for our constituents, particularly lower-income households that rely on borrowing, we urge the Commission to align the rule with the statutory framework and properly tailor it to protect investors while minimizing disruption to the securitization markets.

U.S. securitization markets are essential to financing single and multi-family housing, commercial real estate, and consumer and business borrowing in every community across the country. Securitization allows banks and other lenders to provide more credit at a lower cost than would otherwise be possible. Rather than lenders holding loans on their balance sheets, loans can be placed in a securitization, where investors exchange cash for the bonds that are created. This process allows for a more efficient cycling of lending capital through the financial system, which is vital to supporting the widespread access to affordable credit that benefits American families, homeowners and renters, and job creators. It also helps transparently distribute risk across many different market participants. The benefits of securitization are particularly important when interest rates are high, as they are today, and many banks reduce their lending activities.

Today's well-functioning securitization markets undergird core economic activities on which our constituents rely. In 2022, over $300 billion in asset-backed securities and over $2.1 trillion in mortgage-backed securities were issued. This activity funded approximately 70 percent of single-family residential mortgage loans in the U.S. Securitization is also critical for commercial mortgage lending and multi-family housing finance, funding over $421 billion of commercial mortgages. These statistics underscore the extent to which our communities rely on access to affordable credit and the fact that this financing cannot be supported solely by bank balance sheets.

The Commission first proposed this rule to implement Section 621 of the Dodd-Frank Act in 2011, but it was never finalized. Since then, our securitization markets have evolved significantly, thanks in part to new Commission rules, and resumed their role as a vital source of strength for our financial system, as we saw during the COVID-19 economic shock. However, the Commission has not adequately updated the Proposal to account for current market realities, resulting in requirements that are inconsistent with common industry practices and fail to account for the robust regulatory safeguards that currently exist to mitigate conflicts of interest.

For example, the Proposal expands the definitions of "securitization participant" and "conflicted transaction" so broadly that they would scope in firms and ordinary-course activities that are central to today's well-functioning securitization markets, while creating legal uncertainty regarding customary and essential functions of managing or investing in a securitization. Also, the Proposal would prohibit many common risk-mitigation and hedging practices by financial institutions, including the government-sponsored enterprises Fannie Mae and Freddie Mac, negatively impacting bank safety and soundness and putting taxpayer dollars at risk.

Some are rightly concerned that the rule could even be interpreted to include Mortgage Insurance Linked Notes (MILNs). MILNs are a vital tool for the housing finance ecosystem and are used to manage and disperse risk and enhance capital positions, which in turn helps more low-down payment home buyers. In addition, the Proposal could prevent an asset manager, who had no role in or knowledge of a securitization transaction, from exercising its fiduciary duties to its investor clients. We are concerned that these and other features of the Proposal will cause market participants, including investors, to refrain from participating in the securitization markets because they conclude that the risks outweigh the benefits of engaging in transactions.

To limit the potential disruption to this critical marketplace, we strongly encourage the Commission to take into account the significant feedback it has received and properly tailor the rule. We share the Commission's interest in minimizing negative unintended consequences such as drastically reducing the ability of securitization markets to support our constituents' access to affordable consumer, mortgage, auto, and business lending.

Thank you for your attention to this issue. We look forward to hearing from you on this important matter.

Sincerely,

Wiley Nickel
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