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December 20, 2023

The Honorable Sherrod Brown
Chairman
The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Patrick McHenry
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Prohibition Against Conflicts of Interest in Certain Securitizations*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (SEC) entitled “Prohibition Against Conflicts of Interest in Certain Securitizations” (RIN: 3235-AL04). We received the rule on November 30, 2023. It was published in the *Federal Register* as a final rule on December 7, 2023. 88 Fed. Reg. 85396. The effective date is February 5, 2024.

According to SEC, it is adopting this final rule to implement section 621 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) prohibiting an underwriter, placement agent, initial purchaser, or sponsor of an asset-backed security (including a synthetic asset-backed security), or certain affiliates or subsidiaries of any such entity, from engaging in any transaction that would involve or result in certain material conflicts of interest. See *generally* 15 U.S.C. § 77z-2a (section 621 of the Dodd-Frank Act).

Enclosed is our assessment of SEC’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Vanessa A. Countryman
Secretary
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
“PROHIBITION AGAINST CONFLICTS OF INTEREST IN CERTAIN SECURITIZATIONS”
(RIN: 3235-AL04)

(i) Cost-benefit analysis

The Securities and Exchange Commission (SEC) conducted an economic analysis of this final rule. According to SEC, the final rule may realize several benefits, for example, it may help to: alleviate investor concerns that the securities they purchase might be tainted by certain material conflicts of interest; reduce moral hazard and adverse selection costs in the asset-backed security (ABS) market; enhance market stability; and lower credit costs in loan markets. Regarding costs, SEC stated that the final rule will create direct compliance costs for securitization participants and that the rule will initially be more costly for securitization participants that are not subject to the Volcker Rule. SEC also discussed throughout the preamble of the final rule several cost-related concerns raised by commenters.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

SEC prepared a Final Regulatory Flexibility Analysis. The analysis included (1) a statement of the need for and objectives of the rule, (2) a description of significant issues raised by public comments, (3) a description of the small entities subject to the rule, (4) projected reporting, recordkeeping, and other compliance requirements, and (5) a description of agency actions to minimize effects on small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, SEC is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative

Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, SEC is not subject to the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On February 14, 2023, SEC published a proposed rule. 88 Fed. Reg. 9678. SEC stated that it received over 900 comment letters from a variety of commenters, including institutional investors, issuers, and various other market participants, professional, policy, and trade associations, Members of Congress, former federal government officials, academics, and unaffiliated individuals. SEC addressed comments throughout the preamble of the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

SEC stated that certain provisions of this final rule contain information collection requirements under PRA. SEC also stated that the title for the information collection is the “Securities Act Rule 192” (OMB Control Number 3235-0807). SEC estimates the total annual burden of the information collection to be 31,606 hours and the cost to be \$6,321,150.

Statutory authorization for the rule

SEC promulgated this final rule pursuant to sections 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37 of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, SEC is not subject to the Act.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, SEC is not subject to the Act.