February 20, 2018 VIA ELECTRONIC DELIVERY

The Honorable Melvin L. Watt

Director

Federal Housing Finance Agency

400 7th Street, NW

Washington, DC 20024

RE: Credit Score Request for Information

Dear Director Watt:

The Texas Bankers Association (TBA) is pleased to submit the following comments on the agency’s request for public input on altering the use of credit scores in connection with the sale of mortgages to Fannie Mae and Freddie Mac. TBA is the oldest and largest state banking association in the nation representing approximately 500 federally-insured depository institutions headquartered or doing business in the State of Texas.

The current system, which has been in effect for over 30 years, has performed very well in all material aspects. The chief of these, of course, is serving as a reliable indicator of loan performance which has consistently produced lower default rates on single-family conventional loans with average or above-average FICO credit scores.

Even over the course of the recent mortgage crisis, FICO scores remained a dependable source of independent and objectively produced data which worked well not just for Fannie Mae and Freddie Mac but for all participants in the secondary mortgage market, including borrowers, lenders, mortgage insurers, aggregators, securitizers and, perhaps, most importantly, those willing to place their investments into the secondary mortgage market. This dependence by secondary mortgage market participants is very important as a study by the Housing Commission of the Bipartisan Policy Center indicates that approximately 60 percent of mortgages in the $13 trillion mortgage market are sold to third parties.[[1]](#footnote-1)

One of the disappointing features of the post-recession housing recovery has been the ongoing overreliance on government support in the housing finance system. During this period, most estimates are that up to 90 percent of new mortgages are backed in some manner by the federal government; roughly double their average share from 2000 through 2007.[[2]](#footnote-2) TBA supports the return of private capital to the housing finance system, particularly in the private-label MBS market, and we respectfully suggest that introducing “alternative credit score models”[[3]](#footnote-3) for the purpose of qualifying persons with sparse or inactive credit files simply for the purpose of expanding the eligible borrower base would be negatively perceived and extremely ill-timed in today’s still-recovering market. TBA is concerned that adding an untested alternative to the current credit rating system without a longer verifiable track record of relevant performance measurements would inadvertently create more confusion in the housing finance system.

It has been suggested that credit availability as it relates to credit scoring would be advanced by introducing additional data sources that are currently not captured by credit reporting agencies (CRA) within the existing credit scoring system. For instance, telecommunications payment histories, such as internet, cellular telephone, and cable bills, could also be a good indicator of a consumer’s ability to make on time payments, but such information could just as easily be incorporated within the current system. Timely rental payments are another source of reliable credit history that has very limited availability under the current system.

Another major problem with the dual scoring approach which would arise from adding an alternative scoring system, especially one with the stated, implied or even perceived design to make certain borrowers look less risky, is that the failure to utilize this “alternative” could then expose originators and their business partners (including Fannie Mae and Freddie Mac) to legal liability under the so-called “disparate impact” doctrine. Under this legal theory, which has been incorporated into current banking[[4]](#footnote-4) and other federal regulations[[5]](#footnote-5) on a basis even more broadly than allowed under the Supreme Court precedents,[[6]](#footnote-6) business practices which are neutral on their face can be deemed discriminatory if they are disproportionately adverse to a protected class under federal anti-discrimination laws.

The TBA position is that federal law and regulation should require actual intention to discriminate rather than reliance on any form of disparate impact. In our view, the adoption of an alternative system with lower credit scoring standards would move in the opposite direction of effective and fair federal policy.

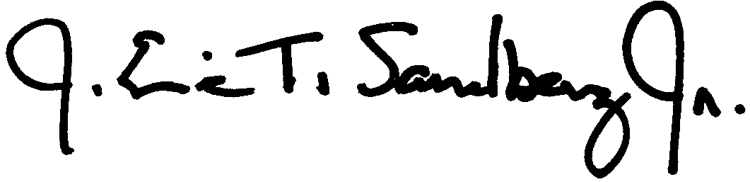
As has also been suggested by others in this public comment process, there is also the additional costs factored into the mortgage origination process as new systems, employee training, record keeping, etc., would be necessary in order to incorporate a second credit scoring system. There is also the inevitable confusion which would arise from the use of a different system which utilizes, as is now the case, the same numeric parameters as FICO.

With respect to the competition issue and pending legislation introduced by Sen. Tim Scott (S. 1685) and Rep. Ed Royce (H.R. 898) to establish a government “validation and approval process” for credit scoring systems, TBA fails to see why additional government regulation is a solution for the current marketplace which now allows any company to develop and offer for sale their individual proprietary systems.

The best basis for increasing mortgage credit availability that TBA has consistently suggested is for the FHFA, CFPB and other federal financial supervisory agencies to amend the Ability-to-Repay and Qualified Mortgage standards. The experience gained in the four years since these regulations became effective in January 2014 clearly demonstrate that they have broadly and needlessly impaired the mortgage lending capacity for all lenders. The overly prescriptive income, debt-to-income ratio, employment, and specifically credit history information should be revisited on a joint agency basis pursuant to the broad authority granted the agencies under Sections 1411, 1412, and 1414 of the Dodd-Frank Act.[[7]](#footnote-7)

Thank you for the opportunity to submit these comments.

Sincerely,



J. Eric T. Sandberg, Jr.

President/CEO

1. *The Role of the Secondary Market in Mortgage Financing*, https://bipartisanpolicy.org/library/role-secondary-market-mortgage-financing/Bipartisan Policy Center (December 6, 2013). [↑](#footnote-ref-1)
2. *Fannie Mae, Freddie Mac, and the Federal Role in the Secondary Mortgage Market*, Congressional Budget Office Study, Pub. No. 4021 (December 2010). [↑](#footnote-ref-2)
3. Coalition Letter to FHFA Director Watt (August 17, 2017). [↑](#footnote-ref-3)
4. E.g., FDIC **Policy Statement on Discrimination in Lending.** [↑](#footnote-ref-4)
5. 78 Fed. Reg. 11460 (2013). [↑](#footnote-ref-5)
6. *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.,* 135 S. Ct. 2507 (2015). [↑](#footnote-ref-6)
7. Pub.L. 111–203 (2010). [↑](#footnote-ref-7)