



Welcome to the December edition of the HPC Bulletin. In this month's newsletter you'll find:

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Ed's Insights

The presidential transition is fully underway, with announcements of the President-elect's choices for his economic, national security, and domestic policy teams starting to flow. At the same time, policymaking has not paused, and rumors abound of more to come before inauguration day. I will start with the near-term and then turn to the new Administration.

FHFA finalized its capital rule for Fannie Mae and Freddie Mac, a significant milestone in Director Calabria's quest to the end the conservatorships. FHFA disappointed many with the final rule, although not all for the same reason. From my perspective, FHFA missed an opportunity to reduce the excessive leverage capital buffer, meaning the leverage ratio requirement may well be binding at times. Even now, the risk-based requirement would be only slightly greater than the leverage requirement.

Even more notably, FHFA's changes to the treatment of credit risk transfer was quite modest, rendering the economics of such transactions uncertain at best. In view of the significant public comment on this issue, it is disappointing that greater capital relief for CRT was not provided.

The failure to fix the cross-guarantee provisions will likely adversely affect the UMBS market. I have other

concerns as well, but overall, the rule produces a meaningful capital requirement for the GSEs – something strongly endorsed by FSOC. Next, I expect FHFA will turn to issuing a proposed liquidity rule and a re-proposed set of prudential requirements for independent mortgage banks. Both may appear this month.

There has been recent chatter that the capital rule signals a push to end the conservatorships before inauguration day. While anything is possible, the likely path is more modest, such as an increase in the permitted retained earnings limit.

The incoming Administration faces many challenges, starting with the pandemic. In housing, I believe the plight of renters – and their landlords – will receive immediate attention, as will post-forbearance outcomes. Promoting minority home ownership and reducing racial inequality in housing will be key policy goals for the incoming Administration.

Meg and I had a lengthy and meaningful discussion with the HUD/FHFA transition team recently. We emphasized the good progress that has been made with the FHA program and encouraged its continuation, especially regarding the technology developments that have been taking place.

I wish all of you a peaceful and safe holiday season.

- Ed DeMarco



New Products Rule

HPC set up a new working group to evaluate and comment on FHFA's [proposed New Products Rule](#), which will require the GSEs to provide advance notice to FHFA of new activities and obtain prior approval before launching new products. The proposed rule establishes criteria for determining whether a new activity is a new product that merits public notice and comment, and the timelines for each step of the process. The working group has identified several areas in the proposed rule for additional analysis:

- Adequacy of the timelines
- Level of detail needed in a new product public notice
- Objective criteria for determining whether something is a new product and whether it should be approved

- Appropriate level of transparency for FHFA's new product decision making.

Comments are due on January 8, 2021.

Equal Credit Opportunity Act (ECOA)

HPC's ECOA working group has been actively engaged in developing recommendations to the CFPB's [Request for Information](#) (RFI) on ECOA. There are ten topics raised in the RFI, but HPC has chosen to focus on five: (1) Artificial Intelligence and Machine Learning; (2) ECOA Adverse Action Notices; (3) Affirmative Advertising to Disadvantaged Groups; (4) Special Purpose Credit Programs; and (5) Limited English Proficiency ([separate letter](#)). Although there are several recommendations for each topic, the following are consistent themes in the [letter](#):

- CFPB should provide guidance, whether through rulemaking, official commentary, or otherwise, on its expectations for the application of ECOA to emerging innovations, including expectations for proper monitoring;
- CFPB should update the Regulation B commentary and model notices to account for changes in credit underwriting methodologies and decision making;
- CFPB should clarify the parameters and scope of the application of ECOA to encourage creditors to engage in affirmative advertising to disadvantaged groups and special purpose credit programs; and
- CFPB should coordinate with the other federal financial services regulators to pursue consistent guidance and regulatory expectations. When possible, this should include the attempts to seek consistency not only under ECOA itself, but also between ECOA and other antidiscrimination laws such as the Fair Housing Act.

Another topic covered in the RFI is Limited English Proficiency (LEP). Since the CFPB previously recognized that HPC's LEP working group is one of most engaged, thoughtful, and proactive industry groups and encouraged HPC to submit an ECOA response letter presenting a recommendation that HPC previously conveyed verbally. The LEP letter responds directly to the CFPB's request for additional information on the challenges of serving LEP customers, then recommends a set of regulatory principles and a model for CFPB guidance, the FTC's Dot Com Disclosures guidance.

Lump Sum Escrow Letter to CFPB

HPC sent a [comment letter](#) to the CFPB, signed jointly with the Mortgage Bankers Association, to offer feedback on the CFPB's recent supervisory activity that resulted in a new interpretation of the Reg X escrow rules. The CFPB claims that a servicer may not include in the annual escrow account statement the option for lump-sum repayment of a shortage or deficiency. Specifically, the CFPB explained in the summer edition of the [Supervisory Highlights](#) report that one or more servicers violated Regulation X by including a lump sum repayment option — not a lump sum repayment requirement — in the escrow

account statement, for borrowers with shortages greater than or equal to one month's escrow payment. HPC highlighted that this interpretation contradicts long-standing, historical application of this regulation and requested that the Bureau begin rulemaking to address the disparity in understanding. The HPC-MBA letter requests new regulatory text to expressly permit servicers to include, in annual escrow statements, an option for the borrower to repay in lump sum any escrow shortages or deficiencies that are equal to or greater than one month's escrow account payment. However, since rulemaking will take time, we also requested that the Bureau clarify in writing that a servicer can accept a lump sum repayment from a borrower and that such communications can include written, verbal (inbound or outbound calls), online educational material, and online account pages.

CFPB & HPC Mortgage Servicing Forum

CFPB Director Kathy Kraninger invited HPC members to participate in a conversation with her on COVID-19 servicing practices. The sixty-minute meeting sought to draw contrasts between the COVID-19 challenges and the last crises, walking through a discussion on forbearance communications, post-forbearance solutions, how forbearance and post-forbearance are working in the portfolio and PLS space, and foreclosures. Member comments to Director Kraninger focused on:

- What's working well
- Appreciation for governmental coordination
- Strategies for engaging non-responsive customers
- Ease of implementing forbearance and post-forbearance options
- How lengthy foreclosure moratoria can cause difficulty for all parties

HPC concluded the discussion by committing to work with Director Kraninger and her team on these issues, along with any other issues where they feel that they need industry perspective.

Capital Rule

FHFA's highly anticipated [final capital rule](#) for the GSEs was published on November 18, 2020. HPC appreciates that FHFA released a finalized capital framework for the GSEs after a lengthy and thorough process of reviewing comments from various stakeholders and holding listening sessions to understand stakeholder feedback. While HPC is pleased that FHFA made modest changes to the treatment of CRT, we remain concerned that the final rule doesn't go far enough in providing capital relief and will advocate that further refinements are needed. Overall, HPC sees a revised capital framework for the GSEs as an essential element of safety and soundness regulation and competitive equity but disagrees with several aspects of the final rule and will continue to work with FHFA to make appropriate adjustments.

Member Spotlight



Freedom Mortgage Assisting with Forbearance Plans

Freedom Mortgage, one of the nation's largest full-service non-bank mortgage companies and a leader in VA and government-insured lending, remains ready to assist struggling customers even if they've stopped making mortgage payments without an approved loan forbearance plan or have allowed their forbearance plans to expire. In order to help reach these borrowers, Freedom has joined the "Not OK? That's OK" campaign recently launched by an independent coalition of U.S. mortgage industry leaders. The campaign encourages borrowers who need assistance to not ignore the problem, but to reach out for help. [Read more [here](#)]

Housing Industry: Must-Read

Trump's Time Is Short to Overhaul Fannie-Freddie as Hedge Funds Want

President Donald Trump is running out of time to do what hedge funds and other investment firms with big ownership stakes in Fannie Mae and Freddie Mac have wanted since he took office: put the mortgage giants on a path to exiting government control. [Joe Light, [Bloomberg](#)]

HPC in the News

- [Opinion: FSOC leaves mortgage markets uncertain](#) - National Mortgage News
 - [CFPB, MBA form coalition to help distressed borrowers avoid scams](#) - National Mortgage News
 - [How climate change could spark the next home mortgage disaster](#) - POLITICO
 - [What Sheila Bair brings to table as chair of Fannie Mae](#) - American Banker
 - [MBA, Housing Policy Council seek revision of escrow statement statute](#) - The Legal Description
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