THE HPC BULLETIN

A MONTHLY NEWSLETTER

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

Ed's Insights

On September 25th, the Financial Stability Oversight Council (FSOC) approved a statement endorsing the proposed GSE capital framework proposed by FHFA. FSOC cautioned that any material reduction in capital from the proposed to the final rule would prompt consideration of "other actions," presumably designating the GSEs as SIFIs, subject to added prudential oversight and capital regulation.

FSOC's key findings and member comments are consistent with HPC's advocacy for a system-wide regulatory framework that promotes a competitive, fair, and balanced marketplace. The key findings in FSOC's statement were:

- Market participants' credit risk capital requirements should be aligned across similar credit exposures. FSOC encouraged FHFA and other regulatory agencies to coordinate to produce more consistent approaches to capital. The statement notes that the proposed rule would still give the GSEs "substantially lower risk-based capital requirement[s] than the bank capital framework."
- The proposed capital buffers should not be based on total assets and implied that FHFA consider using risk-weighted assets.

- Total capital sufficiency requires a meaningful leverage ratio that is a backstop to the risk-based requirements. The statement also said that using the bank capital definitions was appropriate, that any final required capital amount that is materially less than what was proposed would raise questions of systemic risk and, in fact more, not less, required capital than proposed may be needed.

FHFA Director Mark Calabria elaborated by stating that “the Council confirms the importance of ensuring that each Enterprise is capitalized to remain a viable going concern both during and after a severe economic downturn. A ‘claims paying capacity’ or similar standard is not appropriate…”

FSOC's statement and the statements made by individual FSOC members are significant for several reasons:

- FHFA has FSOC’s backing not to lower the capital requirements from the proposed level.
- FSOC endorsed the leverage requirement as a backstop, not as the binding requirement.
- By noting the continued misalignment of risk-based charges for similar mortgage risk, FSOC left open whether that gap is fixed by FHFA raising its requirements, the bank regulators lowering theirs, or some combination.
- FSOC endorsed FHFA’s use of the bank capital definitions and structure.
- CFPB Director Kathleen Kraninger said the robust proposed capital requirements might increase mortgage costs in the near-term but, by helping create a more competitive marketplace, mortgage rates should be lower in the long-term.
- Director Kraninger strongly endorsed increased secondary market competition, noting that “Competition is a critical means of improving consumer welfare.” She added: “More competition should also facilitate innovation to provide consumers with new, beneficial financing options that are not available today.”
- Comptroller Brian Brooks said the OCC wants to ensure banks continue to play a meaningful role in housing finance and that the OCC will look closely at the capital relief they provide for CRT.

The FSOC statement culminates FSOC’s first effort to apply an activities-based, rather than entity-based approach to systemic risk review.

- Ed

Policy Pulse

FHA Servicing Handbook

HPC joined the American Bankers Association and the Mortgage Bankers Association in a ***comment letter*** to HUD, offering feedback on recent proposed changes to the servicing section of the FHA Single-Family Housing policy handbook. The letter commended FHA for their work to update existing servicing and loss mitigation policies, and in some key places, aligning policies with those of Fannie Mae and Freddie Mac.

The letter also made several high-level recommendations for HUD to consider. The recommendations include:

- Reforming the foreclosure timeline structure;
- Reforming the conveyance process;
- Enhancing the Claims Without Conveyance of Title program;
- Making additional enhancements to the loss mitigation process and associated waterfall;
- Repealing the face-to-face interview requirements (would require a regulation change);
- And allowing a reasonable time window to implement handbook changes.

ATR-QM

In June, the CFPB published a much-anticipated proposal to update the Ability-to-Repay/Qualified Mortgage regulation. The core of the proposed rule would replace the DTI limit and Appendix Q with a requirement for creditors to provide evidence in the loan file that the borrower's income and debt were verified, and DTI considered. The CFPB also proposed to add a new feature to the QM definition, imposing a rate threshold for a QM loan - APR can be no more than 200 basis points above APOR. The proposal also retains the existing Safe Harbor cap, which deems QM loans with APRs no greater than 150 basis points over APOR to be conclusively presumed to fulfill ATR.

Given that the core QM proposed rule reflected HPC's recommendations to the Bureau during the Advance Notice of Proposed Rulemaking (ANPR), HPC was supportive in the ***HPC comment letter*** and in another ***QM Coalition letter***. However, HPC believes that the proposed rule should be modified in certain respects. Specifically:

- Minor edits to the new "consider and verify" text to ensure objectivity;
- Consideration for a 200 bps Safe Harbor standard; and
- A recommended alternative approach for handling short-reset ARMs, establishing a cap on the highest rate in the first five years of no more than 250 bps over the published Average Initial Interest Rate (AIIR). This cap would reinforce the underwriting standard for a QM ARM and would replace the proposed new APR calculation proposed by the Bureau.

QM Seasoning Proposal

In August, the CFPB published an additional yet distinct Qualified Mortgage proposal - this time proposing to allow certain qualifying seasoned loans to secure QM safe harbor status. The proposal does this by defining a new category of QMs that meet certain product features as well as seasoning, performance, and portfolio requirements. Namely, under this proposal, residential mortgages could become QM if they are held in portfolio and seasoned for three years with no more than two 30-day late payments so long as they are also first-lien, fixed-rate loans that meet the statutory QM product standards and the new "consider and verify" debt, income, and DTI requirements. Covered transactions that satisfy the proposed Seasoned QM requirements would be conclusively presumed to fulfill ATR and therefore receive a safe harbor from ATR liability at the end of the seasoning period. Although the population of mortgages that would qualify for QM status under the rule is very limited, HPC supports the CFPB's efforts to allow qualifying seasoned loans to secure QM safe harbor status. However, HPC recommends that the CFPB consider modifying certain elements of the proposed rule, including:

- Eliminating the proposed rule's portfolio requirement, which significantly restricts the types of institutions that can produce and the population of loans that will be eligible for QM status and

- Extending the seasoning opportunity for non-QM loans already in existence, as opposed to limiting the eligibility to loans originated after the effective date of the new QM rule.

HPC's comments on the Bureau's QM seasoning proposal were submitted on October 1st.

Disparate Impact

On September 4th, HUD published the ***final rule*** on disparate impact, as authorized by the Fair Housing Act. The final rule is intended to align the regulation with the Supreme Court's Inclusive Communities case, which affirmed the legitimacy of disparate impact as a component of the Fair Housing Act and HUD's fair housing regulations and also set forth more definitive legal standards for bringing and defending such cases. The final rule appears to address one of the key concerns raised by HPC during the comment period, removing provisions focused on the use of third-party models and algorithms. The final rule also reinforces the burden-shifting framework established in the 2013 rule-making. Of concern, the final rule retains the five-factor pleading standard, which includes a requirement for a claimant to allege that the policy or practice in question is "arbitrary, artificial, or unnecessary," a factor that the civil rights community deemed to be challenging, if not impossible, to fulfill. Now that the rule has been published, HPC has reengaged with key civil rights and consumer advocacy groups, like the National Fair Housing Alliance (NFHA), and will renew the discussion regarding financial institutions' commitment to protect the right to pursue legal action for housing related discrimination, be it purposeful or unintentional. HPC has convened the disparate impact working group to determine appropriate next steps, including this re-engagement with the civil rights community.

LEP (Limited English Proficiency) Work Underway

Following the July CFPB roundtable discussion with Director Kraninger, HPC set up a call with the Bureau to advance the association's previously proposed regulatory framework to address fair lending concerns associated with the delivery of services to LEP customers. The roundtable focused too narrowly on ECOA and COVID-19 issues, although it was intended to provide the opportunity for consumer advocates and industry representatives to share thoughts on ways the CFPB can facilitate access to mortgage products and services for LEP consumers. Therefore, HPC's working group - recognized by the CFPB as one of the most engaged, thoughtful, and proactive industry groups – will revisit discussions on broader regulatory guidance and clarification that could provide the lending community with greater confidence to serve LEP customers. HPC teamed up with the law firm Ballard Spahr to suggest a model for such guidance - the FTC publication on disclosures in digital marketing (.com Disclosures). Combined with the content of HPC's LEP regulatory proposal, this document serves as a helpful model for the CFPB to consider, to produce useful legal guidance for industry participants.

Credit Risk Transfer

Following the closing of the public comment period on its proposed capital rule, the FHFA hosted a public forum on credit risk transfer in the context of the proposed capital rule. HPC President Ed DeMarco ***presented remarks on behalf of HPC*** voicing strong support for CRT and for ensuring the GSEs receive adequate capital offset for CRT transactions in the capital rule.

Member Spotlight

IBERIABANK

IBERIABANK and FHLB Dallas Award More Than $52K to Six Nonprofits

The Grants Will Assist Organizations in Louisiana and Arkansas

IBERIABANK of Lafayette, Louisiana, and the Federal Home Loan Bank of Dallas (FHLB Dallas) have awarded $52,725 in Partnership Grant Program (PGP) funds to five community-based organizations (CBOs) in Louisiana and one in Arkansas. PGP grants help qualified nonprofit organizations fund a variety of operational and administrative activities that are critical to serving their communities. [Read more here]

Housing Industry: Must-Read

Fannie, Freddie pose risk to financial system, panel says in 'historic' finding

Fannie Mae and Freddie Mac, the government-run companies that stand behind about half of the $11 trillion U.S. mortgage market, pose a potential danger to the stability of the broader financial system, a Treasury-led panel said Friday. The companies still do not have enough capital to protect themselves from the massive risk in their portfolios, the Financial Stability Oversight Council concluded following a long-awaited review of the secondary mortgage market, where investors purchase home loans. [Katy O'Donnell, *POLITICO*]

HPC in the News

- Housing News Podcast: Ed DeMarco on the future of housing regulation - HousingWire
- Housing Policy Council throws support behind proposed QM changes - Mortgage Professional America
- FHFA urged not to come down so hard on credit risk transfers - National Mortgage News
- Mortgage industry provides commentary on CFPB’s proposed changes to QM loan definition - HousingWire
- Could capital plan for Fannie and Freddie stymie homeownership? - American Banker
- Jumbo, Servicing Products; Webinars; After 12 Years of Conservatorship, Agencies are Very Much in the News - Mortgage News Daily

Thoughts? Suggestions? Please reach out to
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