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

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Ed's Insights

August saw intense focus on two policy changes put forth by FHFA, while an even bigger change continues to lurk.

The first issue was FHFA's proposed capital rule, for which HPC's capital working group produced a lengthy comment letter. FHFA's proposal improved upon the 2018 version and adopted most of the recommendations HPC made on that earlier version. Yet the new version had some surprising shortcomings.

While the rule's improved alignment with the bank capital regime was a welcome development, the proposal lacked recognition of key differences between the Enterprises and banks that should have been factored into the rule. Consequently, the proposal would give

much less capital relief for credit risk transfer than expected. Also, the rule produced a binding leverage requirement rather than treating the leverage ratio as a backstop to a risk-based capital requirement.

Another policy change that garnered our attention was the surprise adverse market fee announced in mid-August. The lack of explanation for the fee combined with a Sept. 1 effective date disrupted the market. I have had numerous conversations with the FHFA regarding the fee. While FHFA eventually altered course, this was a disturbing episode.

Waiting in the wings is FHA's pledge to end the conservatorships. We still know little of when or how this would be done. And we do not know what role the government would play in backstopping post-conservatorship debt or MBS issued by the Enterprises.

We are pondering what all this means for the future of the secondary market and for our advocacy work in support of a competitive marketplace. I expect to be regularly engaged with FHFA in the weeks ahead to discuss where they are headed. But we have been reminded again that government interventions that fail to account for market realities, and that favor the Enterprises' interests over those of consumers or lenders, can produce unsettling results.

Sincerely,

Edward J. DeMarco

Policy Pulse

Enterprise Regulatory Capital Framework

HPC's Capital Working Group has been actively engaged in analyzing ***FHFA's re-proposed capital rule*** to develop comments for submission to FHFA. The working group has concluded that the new capital framework is an improvement over the 2018 proposal and is pleased to see that many of the features in the proposed rule correspond with comments HPC made in response to the 2018 capital rule proposal. However, HPC believes that the proposed rule should be modified in certain respects. Specifically –

- The leverage requirement should be reduced as it is excessive and, as a binding constraint, could motivate the companies to accept and hold riskier assets than is appropriate;
- The treatment of credit risk transfers should be revised, because as a result of the excessive leverage ratio as well as a general discounting of this form of loss distribution, it discourages the use of these risk reducing structures;
- The capital buffers should be based upon risk-weighted assets rather than adjusted total assets;
- The proposed countercyclical adjustment in the risk-based grids for single-family mortgage exposures is based on national house price fluctuations, but should be based upon changes in state-level or MSA-level house prices to be most effective;
- The FHFA does not adequately describe the components and weights for the counterparty haircut for mortgage insurance, which should be transparent and objective; and, finally,
- Some elements of the single-family risk multipliers and credit enhancement multipliers could benefit from additional consideration and refinement.

Comments on the Enterprise Regulatory Capital Framework were due to FHFA by August 31st.

CFPB- Equal Credit Opportunity Act (ECOA)

On Monday, August 10, HPC joined together with eight trade associations and consumer advocacy groups, including the ABA, BPI, MBA, Center for Responsible Lending, and the National Fair Housing Alliance to ***request*** that the CFPB grant an extension of time to respond to a Request for Information (RFI) on ECOA. Since the RFI covers ten distinct and complex issues including Disparate Impact, Limited English Proficiency, Special Purpose Credit Programs, and Affirmative Advertising to Disadvantaged Groups, the joint letter requested at

least an additional 60 days in which to respond to the RFI. On August 19, the CFPB ***granted*** the requested extension of 60 days for the public to comment on the RFI. With this extra time, HPC will continue to gather member feedback on some, but not all, areas covered by the RFI. Comments on the ECOA RFI are now due on December 1.

Credit Reporting – Congressional Letter and CFPB Consumer Reporting FAQs

With the large number of borrowers in forbearance, some covered by the CARES Act and others not, a significant policy issue has become how servicers should report borrowers' payment history to credit reporting bureaus. HPC has led an effort to affirm that the CARES Act protections and standards on credit reporting during the pandemic are effective and appropriately preserve the reliability of credit data in lending decisions. HPC ***developed a letter that was signed jointly*** by the ABA, AFSA, CBA, ICBA, MBA, and the Chamber of Commerce to ask that additional restrictions or requirements on credit reporting, particularly the suppression of critical credit data, not be included in future COVID-19 relief legislation.

Additionally, HPC engaged with the CFPB to discuss the Bureau's June 16th issuance of the CARES Act Consumer Reporting FAQs. Specifically, HPC ***developed a letter*** expressing concern with a particular FAQ (#10) that has generated conflicting interpretations. This FAQ implies that that all borrowers are covered by a single accommodation that will resolve the outstanding delinquency, which ignores the fact that most borrowers affected by COVID-19 are offered not one, but two accommodations – an initial forbearance and then a subsequent accommodation, such as deferral or a loan modification, to resolve the missing payments. The answer to the question also omits that some minimal number of borrowers who receive the initial payment relief accommodation will not transition into a final post-forbearance repayment accommodation that brings the loan current. In situations where consumers don't resolve the underlying delinquency through a post-forbearance loss mitigation accommodation, HPC seeks affirmation from the CFPB that servicers are to follow standard Fair Credit Reporting Act (FCRA) treatment to accurately reflect the status, a scenario not addressed in FAQ 10.

Regulation X

In a move designed to alleviate confusion about implementing COVID-19 relief programs for homeowners, the CFPB published an interim final rule to temporarily permit mortgage servicers to offer certain loss mitigation options based on the evaluation of an incomplete loss mitigation application under

Regulation X. HPC submitted a ***comment letter*** on August 3rd commending the CFPB for issuing the interim final rule, but also seeking certain key modifications. Specifically, HPC requested that the CFPB –

- Amend the regulatory language to ensure that loss mitigation options that capitalize arrearages, as is common with all loan modifications offered by the GSEs and government agencies, are covered under the interim final rule;
- Clarify that exemptions under the interim final rule should be tied to the consumer's rejection of the loss mitigation offer, rather than the consumer's acceptance; and
- Modify the regulatory language around permissible fees to recognize that fees existing before a borrower entered into a COVID-19 related forbearance are still valid.

HPC also took the opportunity to reiterate our previous recommendation that the CFPB add a new section to Regulation X that would establish a distinct set of relevant notification and communications procedures for servicers to assist mortgage borrowers affected by emergencies such as the COVID-19 pandemic as well as federally declared disasters, when the same set of streamlined approaches to borrower assistance are used. The HPC proposal would permit servicers to use an optional, alternative approach to contact borrowers, efficiently provide emergency assistance, and communicate relevant information throughout the relief period.

LLPA Announcement from the GSEs

On August 13th, ***Fannie Mae*** and ***Freddie Mac*** announced that the companies would impose a new adverse market fee of 50 bps on refinance transactions. This change was going to apply to all affected transactions delivered on or after September 1, 2020, a timeframe that would have created negative consequences for the industry and consumers alike. HPC ***issued a statement*** opposing the hasty manner in which the policy was announced, the lack of a business rationale, and the inadequacy of the implementation period. HPC called on FHFA to reconsider the policy, and to provide the public with an explanation regarding the market conditions and financial circumstances of the GSEs that require the imposition of an adverse market fee. Fortunately, on August 25th, FHFA ***announced*** that it was delaying the effective date of the adverse market fee until December 1st. FHFA also announced that it was exempting HomeReady and Home Possible refinances and loans less than $125,000 from the adverse market fee, a change that HPC members believed was a critical and necessary alternative if the fee could not be repealed altogether. HPC was pleased with the consumer benefit from this change, as well as the impact on lenders, who will not be saddled with the unexpected costs associated with implementing the adverse market fee in a rushed fashion. In

addition, HPC was very appreciative that FHFA publicly and clearly explained the rationale for the fee. This rationale will hopefully help inform policy makers of the trade-offs involved with even worthwhile polices like forbearance and foreclosure moratoriums.

Member Spotlight

U.S. Bank outlines details of $15 million Rebuild and Transform Fund

The U.S. Bank Foundation fund supports leaders of color and addresses inequities, with initial $5 million going toward Twin Cities

U.S. Bank announced details of a $15 million Rebuild and Transform Fund, which will help small businesses impacted by civil unrest and support organizations working to address systemic economic and racial inequities. The U.S. Bank Foundation will make philanthropic investments in Black, Indigenous, People of Color (BIPOC)-led organizations, with a priority on Black-led nonprofits. The initial $5 million in grants will be distributed in the Twin Cities as general operating support and will include funding to grantees to support trauma care for staff or residents in impacted areas. The Fund is part of the bank's previously announced $116 million commitment to address social and economic inequities. [Read more here]

Housing Industry: Must-Read

Fannie and Freddie pushing COVID refi fee to December

The government-sponsored enterprises said Aug. 12 they would start charging an additional “adverse market fee” of 0.5% on refis due to the economic uncertainty caused by the coronavirus pandemic. But the short notice and estimates that the fee could lead to significant costs for consumers looking to refinance riled both lawmakers and mortgage lenders. They urged the FHFA to reconsider the policy. [Hannah Lang, *American Banker*]

HPC in the News

- The number of Americans skipping mortgage payments is falling — except among these borrowers - MarketWatch
- Low Mortgage Rates Help Propel A Strong Housing Market - Forbes
- Housing industry turns against Fannie, Freddie’s added refinance fee - HousingWire

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Thoughts? Suggestions?

We’d love your feedback on our newsletter in order to continue improving our service to you. To connect with us further, please visit our LinkedIn page, website or contact us at the email address below.