FedFin Daily Briefing

Thursday, June 4, 2020

CFPB Proposes LIBOR Transition Roadmap for Creditors

In preparation for the end of LIBOR, the CFPB today issued an NPR laying out a roadmap for creditors and issuers to choose a compliant replacement index, with both Fed-approved SOFR indices and the Wall Street Journal's prime rate cited as approved alternatives. However, creditors and issuers would be able to select other indices as long as they ensure that rates are substantially similar to the rate using the LIBOR index. Creditors and credit card issuers would be permitted to begin using replacement indices on or after March 15, 2021 if certain conditions are met. The NPR would require that creditors issue change-in-terms notices for HELOCs and credit card accounts starting October 1, 2021. The Bureau also updated its consumer handbook on adjustable-rate mortgages to remove references to LIBOR.

FHA Takes a Different Forbearance Approach

Today, FHA issued a new policy for mortgages that go to forbearance prior to FHA endorsement. This policy differs from the approach taken by Fannie Mae and Freddie Mac and may thus lead to migration of forborne mortgages to the FHA.

The GSEs have established significant loan level fees (equivalent to 5% to 7% of the loan amount) to cover their risk on each mortgage. FHA's approach is to require the mortgage originator to enter into a partial indemnification agreement. Under it, loans that go to claim within two years after endorsement require the mortgagee to reimburse FHA for losses up to 20% of the loan amount plus interest, penalties and fees. Lenders will likely favor the FHA approach that applies only to loans that have gone to claim compared to the GSE up-front fees that apply to all borrowers seeking forbearance mortgages. However, FHA is at a greater risk than the GSEs were likely willing to assume since, if the mortgagee cannot honor its indemnity commitment, FHA takes a greater loss on riskier loans.

CFPB Sets Strict Servicer Limits on CARES Act Forbearance, Foreclosure

The CFPB and Conference of State Bank Supervisors (CSBS) today issued guidance to mortgage servicers on CARES Act forbearance and foreclosure, establishing in both federal and state law strict limits on servicers designed to protect borrowers electing forbearance on federally-related mortgages. Reiterating what it describes as CARES Act statutory language that servicers are prohibited from charging additional interest, fees, or penalties, the guidance ramps up the risk of enforcement against any servicers still insisting on or charging balloon payments on federal mortgages under applicable forbearance programs. It also makes it clear that borrower consent is needed to shorten forbearance from 180 days, that a borrower's attestation to a COVID-related hardship does not require supporting documentation, borrowers do not need to prove hardship beyond this attestation, and servicers may not take actions to steer a borrower away from CARES Act forbearance. Servicers may not make a determination that a borrower does not need a CARES Act forbearance and therefore limit the amount of forbearance.

OCC Plans to Open New, Digital Banking Era

Continuing Acting Comptroller Brooks' aggressive action plan, the OCC today issued an ANPR launching a comprehensive review of rules governing bank digital activities and an NPR to update its activity and operation rules. The digital activities ANPR seeks comment on eliminating hurdles to using new technology and the need for a substantive rewrite of the agency's electronic-transaction and -payment rulebook. It also asks if rules for crypto-assets, distributed ledger technology, AI/ML, and new payment technologies and processes should be expressly established. Input on regtech, COVID-19's digital activity impacts, and small bank technology use is also requested. Although the OCC states that is not seeking comment on its authority to issue special purpose national bank charters (see FSM Report **FINTECH20**), it is likely to receive extensive comment urging revisions to this charter or even a new one expressly for digital activities. An in-depth client report on this ANPR will be shortly provided to clients.

The activities and operations NPR would expand the ability of national banks to choose corporate governance provisions under state law and clarify the extent to which a national bank may adopt anti-takeover provisions permissible under state law. It would also clarify and codify recent OCC interpretations addressing derivatives, payment system membership, capital stock issuances and repurchases, financial literacy programs, and tax equity finance transactions. Comment on both rulemakings is due August 3.

Recent Files Available for Downloading

The following reports and analyses have been sent to retainer clients recently. Copies are also available to retainer clients on the Archives section of Federal Financial Analytics' website: www.fedfin.com or clients may obtain the reports/analyses by e-mailing requests@fedfin.com giving the requested item name, firm, and e-mail address. To learn more about GSE Activity Reports, click: http://www.fedfin.com/index.php?option=com_content&view=article&id=18&Itemid=18

- **CHINA15:** The Senate Banking hearing on Hong Kong makes it clear that legislation will soon advance secondary sanctions on banks doing business with entities that contribute to violations of Hong Kong's Basic Law.

- **GSE-060320:** So far, we've assessed an array of strategic and market-structure issues raised by FHFA's capital proposal. Before turning to the most critical question of all – could this capital framework really bring the GSEs out of conservatorship – we turn to another that determines whether Congress will let FHFA do so: how this capital framework affects affordable housing.

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- **RESCUE75:** In this report, we assess the financial policy implications of today's Senate Banking hearing at which discussion also ranged over unemployment insurance, business liability protections, and other hotly-contested issues debated ahead of the next COVID-relief package.

- **GSE-060120:** We turn now to the impact of the FHFA capital proposal on the strategic value of MI and other forms of credit enhancement that are not credit risk transfer, which we will subsequently consider.

- **GSE-052920:** When FHFA Director Calabria took over the GSEs' new capital construct, he made it clear that he wanted one comparable to U.S. GSIBs. While the new NPR is considerably more comparable to the bank framework and, in some cases, also to the unique one governing GSIBs, it differs in many key respects.

- **GSE-052820:** Building on our initial, high-level analysis of the new FHFA capital proposal, we here go in depth into a critical part of FHFA's structural redesign: the relationship of the risk-based capital (RBC) weightings to the newly beefed-up leverage ratio (LR).

- **PAYDAY9:** Federal Banking agencies have differed ever since the OCC in 2013 imposed strict limits on the extent to which federally-chartered institutions could offer short-term, small-dollar loans and then again in 2018 when the OCC reversed itself to encourage more of the loans some castigate as predatory payday products that others believe are essential to lower-income households.

- **CRA28:** In this report, we expand our initial analysis of the CRA rule finalized by the OCC shortly before Comptroller Otting's departure.

- **GSE-052620a:** One reason banks stay in the mortgage business is that it's an easy way to book LMI loans for CRA credit and then move them on to Ginnie or the GSEs to reduce most of the risk.

- **GSE-052620:** As promised, we are following through with in-depth analyses of FHFA's GSE post-conservatorship capital paradigm, starting here with big-picture conclusions about structural transformation.

- **GSE-052120:** We have only cracked the surface of the new FHFA proposal and will turn shortly to its strategic and competitive implication.

- **GSE-052020:** After much internal consternation, the FDIC and OCC have agreed with the Fed and provided temporary relief from the supplementary leverage ratio (SLR) for reserves held at the Fed and direct Treasury obligations.

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