

October 17, 2019

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: October 22, 2019, “The End of Affordable Housing? A Review of the Trump Administration’s Plans to Change Housing Finance in America”

The Committee on Financial Services will hold a hearing entitled, “The End of Affordable Housing? A Review of the Trump Administration’s Plans to Change Housing Finance in America,” on Tuesday, October 22, 2019 at 10:00 a.m. in room 2128 of the Rayburn House Office Building. There will be one panel with the following witnesses:

- **The Honorable Steven T. Mnuchin**, Secretary, U.S. Department of the Treasury
- **The Honorable Dr. Benjamin S. Carson**, Secretary, U.S. Department of Housing and Urban Development
- **The Honorable Dr. Mark A. Calabria**, Director, Federal Housing Finance Agency

Background

On March 27, 2019, the Trump Administration released a memo,¹ directing Treasury Secretary Mnuchin to develop a plan for reforming Fannie Mae and Freddie Mac (the Enterprises) and directing Department of Housing and Urban Development (HUD) Secretary Carson to develop a plan for reforming Ginnie Mae and the Federal Housing Administration (FHA). On September 5, 2019, Treasury and HUD responded to that memo with their respective plans.²

Summary of Treasury and HUD Plans

The Treasury and HUD plans lay out both legislative recommendations that would require Congressional action, and administrative recommendations that could be implemented without Congressional action. The administrative recommendations in the Treasury plan would largely depend on action by the Federal Housing Finance Agency (FHFA) while the administrative recommendations in the HUD plan would be carried out by HUD. The plans do not provide legislative language associated with the legislative recommendations. In general, the legislative and administrative recommendations in both plans broadly aim to limit the federal role in the housing finance system.

¹ Available at: <https://www.whitehouse.gov/presidential-actions/memorandum-federal-housing-finance-reform/>

² Treasury plan available at: <https://home.treasury.gov/system/files/136/Treasury-Housing-Finance-Reform-Plan.pdf>

HUD plan available at: <https://home.treasury.gov/system/files/136/HUD-Housing-Finance-Reform-Plan-September-2019.pdf>

Legislative Recommendations

The Treasury plan includes legislative recommendations that provide the basic framework for structural reforms that would create a multi-guarantor system with Ginnie Mae at the center. Ginnie Mae would be given additional authority to offer an explicit, paid-for guarantee of the timely payment of principal and interest on mortgage-backed securities (MBS) backed by eligible conventional single-family and multifamily mortgage loans. The Enterprises would be re-chartered on the same charter that would be available to potential competitor guarantors. The Federal Housing Finance Agency (FHFA) would continue to regulate the guarantors and would have the authority to approve new guarantors as well as foster competition between the guarantors.

The availability of a government guarantee through Ginnie Mae would be conditioned on an FHFA-approved guarantors taking the first-loss position on the MBS through specified credit enhancement on the mortgage collateral securing the MBS. FHFA would set underwriting standards for eligible loans, and the guarantors would be prohibited from investing in mortgage-related assets or other investments except to the limited extent necessary to engage in the business of securitizing government-guaranteed MBS. In order to preserve small lender access, each guarantor would be required to maintain a nationwide presence, operate a cash window for small lenders, and be prohibited from offering volume-based discounts.

The plan does not discuss whether the guarantors would continue to allocate 4.2 basis points of the unpaid principal balance of new business purchases to fund the Housing Trust Fund and Capital Magnet Fund, but the statutory affordable housing goals would be replaced with a new fee that would be made available through appropriations to fund affordable housing programs targeted to first time homebuyers, low and moderate income, rural, and other historically underserved borrowers. The replacement of the affordable housing goals with a fee is similar to the approach taken in the leaked discussion draft from Senator Corker, which was widely criticized by civil rights groups and other advocates.³

Under the legislative recommendations in HUD's plan, FHA would be re-chartered as an autonomous government corporation within HUD. It is unclear how this would affect the budgets of FHA and HUD. However, given that HUD's plan states that this would "provide the agency tools and resources necessary to make appropriate risk decisions to respond to changing markets," this could also include eliminating or decreasing the offsetting receipts that FHA currently provides for the overall HUD budget, allowing FHA to keep more or all of those receipts. Today, HUD program funding is offset, in part, by FHA receipts.

HUD's plan would also reorganize its current offices by making the FHA Commissioner's role and responsibilities distinct and separate from the Assistant Secretary for Housing, who would be tasked with overseeing a new Office of Rental Subsidy and Asset Oversight that would oversee all of HUD's multifamily housing subsidy programs, public housing, the Housing Choice Voucher (HCV) programs, the Rental Assistance Demonstration (RAD), and the Real Estate Assessment Center (REAC). While Treasury's plan would expand and restructure Ginnie Mae, the only legislative recommendation specific to Ginnie Mae in HUD's plan is for Congress to authorize Ginnie Mae to adjust its guaranty fee within a narrow permissible range. Treasury's plan includes an administrative recommendation for FHFA and

³ National Community Reinvestment Coalition press release, "Senate Housing Finance Proposal Threatens Access, Affordability, and Market Stability," Feb. 2, 2018.

Ginnie Mae to explore the challenges associated with the restructuring of Ginnie Mae proposed in its plan, but HUD’s plan does not include a similar recommendation.

HUD also includes several other legislative recommendations to enhance its systems, enforcement, and oversight, including: enhancing FHA’s authorities to manage lender counterparty risks, increasing funding for technological improvements to FHA’s single family and multifamily operations, and authorizing the subordination of any Property Assessed Clean Energy (PACE) liens on existing FHA loans.

Administrative Recommendations

The Treasury and HUD plans lay out several administrative recommendations that they conclude should be implemented with or without Congressional action. Among the most consequential are Treasury’s recommendations to end the conservatorships of the Enterprises with or without legislative action to provide an explicit government guarantee. The Treasury plan lays out a number of preconditions that it recommends should be in place before ending conservatorship, including capital requirements. In order for the Enterprises to build capital, the Senior Preferred Stock Purchase Agreements (PSPAs) would need to be amended to eliminate the “net worth sweep” which, until recently, required the Enterprises to send all of their profits to the Treasury.⁴ Under the Administration’s plan Treasury would continue to support the Enterprises post-conservatorship through the PSPAs in the absence of legislation providing an explicit government guarantee. While there are concerns about market disruptions due to loss of investor confidence if the Enterprises were to be released from conservatorship without legislation establishing an explicit government guarantee,⁵ Treasury’s plan states that “Treasury does not believe a Government guarantee is required.” Director Calabria has also stated publicly that he agrees with the recommendation to release the Enterprises from conservatorship with or without Congressional engagement to attach a government guarantee and has already taken steps in that direction (see section below for more details).

The Treasury and HUD plans also include several administrative recommendations that aim to reduce the federal role in the housing finance market, including recommendations to:

- End Enterprise support for cash-out refinancings, investor loans, vacation home loans, higher principal balance loans, or other subsets of single family loans;
- Limit Enterprise support for multifamily loans exclusively that support its affordability mission;
- Reduce or eliminate Enterprise support for multifamily loans in areas with rent-control laws;
- Allow the “QM patch,” which currently exempts Enterprise-backed loans from the 43 percent debt-to-income (DTI) maximum for Qualified Mortgages,⁶ to expire on January 10, 2021 in favor of an ability-to-repay rule that establishes a “clear bright line safe harbor”;
- Impose additional requirements prior to implementation of any new pilot programs by the Enterprises;

⁴ See Statement from FHFA Director Mark Calabria on Letter Agreement with Treasury to Increase Fannie, Freddie Capital Retention, Sep.30, 2019.

⁵ See e.g. SIFMA letter to Treasury Secretary Mnuchin, HUD Secretary Carson, and FHFA Director Calabria, Jul. 11, 2019.

⁶ The Consumer Financial Protection Bureau released an advanced notice of proposed rulemaking in July 2019, suggesting letting the QM patch expire on the scheduled date of January 10, 2021. The ANPR requests comment on allowing the patch to expire, and comment on what requirements should replace the patch. ANPR available at <https://www.consumerfinance.gov/about-us/newsroom/bureau-releases-qualified-mortgage-anpr/>.

- Adopt a new risk-based capital regime for FHA’s Mutual Mortgage Insurance Fund above the statutorily required 2 percent capital ratio;
- Adopt risk-based pricing for FHA loans;
- Limit FHA support for repeat borrowers and cash out refinancings;
- Eliminate Home Equity Conversion Mortgage (HECM)-to-HECM refinancings;
- Demarcate the roles of FHA and the Enterprises in the housing market in such a way that could leave FHA with higher risks;

While the broad purpose of the recommendations in both Treasury and HUD’s plans is to shrink the federal government’s footprint in the housing finance market, Treasury also recommends that FHFA revisit its rule⁷ excluding captive insurance companies from Federal Home Loan Bank (FHLB) membership. Expanding FHLB membership to include captive insurers would expand FHLB membership and could introduce new risks to the FHLB system that FHFA would need to expand its oversight capabilities to properly monitor and regulate. Further, Treasury and HUD’s recommendations do not specify how HUD and FHFA would coordinate to ensure that policy changes that shrink the Enterprises’ footprint do not lead to an expansion of FHA’s footprint, or how these efforts would ensure that creditworthy borrowers are not denied access to credit as a result. Similarly, Treasury’s and HUD’s recommendations to limit FHA’s role could also limit its ability to expand in times of market stress. As was demonstrated in the aftermath of the housing crisis, FHA’s ability to expand in times of market stress can effectively help to stabilize the overall housing market and economy.⁸

Recent FHFA Actions

Recently, FHFA has taken steps that appear to be consistent with the Administration’s broader goal of shrinking the federal role in the housing finance market. For example, FHFA recently announced that it would be terminating a Freddie Mac Mortgage Servicing Rights (MSR) pilot that provided financing for nonbank servicers. In the announcement, Calabria explained his justification for this decision by saying: “Going forward, the Enterprises should focus on activities that are core to the guaranty business, mitigate risk, and are essential to end conservatorships.” FHFA also recently revised its multifamily cap structure to eliminate exclusions from the caps; loans that met certain affordability requirements or “green” standards were among those that were previously excluded from the multifamily caps. Calabria explained in the press release announcing the changes that this would “provide ample support for the market without crowding out private capital....”

Treasury and FHFA also recently took a step in the direction of recapitalizing the Enterprises. Specifically, on September 30, 2019, Treasury and FHFA announced plans to amend the terms of the PSPAs in order to permit Fannie Mae to retain \$25 billion and Freddie Mac to retain \$20 billion in capital reserves.⁹ This is an increase from the \$3 billion that each Enterprise was allowed to hold prior to this announcement.

Legislation

- **H.R. 2391**, the “Improving Rural Access to Power Act of 2019” from Representative Scott, which authorizes the Federal Home Loan Banks to purchase investment-grade securities from

⁷ 81 FR 3246

⁸ See, e.g., Center for American Progress, “The Federal Housing Administration Saved the Housing Market” Oct 11, 2012.

⁹ Treasury and FHFA plan, available at <https://home.treasury.gov/news/press-releases/sm786>.

cooperatives that meet certain requirements, including certain investment experience involving the Rural Utilities Service.

- **H.R. ___**, from Representative Green would require the Enterprises to include a preferred language question on the Uniform Residential Loan Application (URLA) form. A preferred language question was previously included in the Enterprises' URLA but was recently removed from the form by FHFA on October 20, 2017.
- **H.R. ___**, the "Homeowner Protection Act of 2019" would give FHFA direct authority to regulate and conduct oversight of servicers and other third-party entities that provide services in relation to Enterprise-backed loans.
- Discussion draft that would prevent the Treasury Secretary from selling preferred stock of Fannie Mae and Freddie Mac, and require the FHFA Director to provide Congress with 30 days' notice before making any policy changes.