

September 11, 2020

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: September 16, 2020, “Prioritizing Fannie’s and Freddie’s Capital over America’s Homeowners and Renters? A Review of the Federal Housing Finance Agency’s Response to the COVID-19 Pandemic”

The Committee on Financial Services will hold a hearing entitled, “Prioritizing Fannie’s and Freddie’s Capital over America’s Homeowners and Renters? A Review of the Federal Housing Finance Agency’s Response to the COVID-19 Pandemic,” on Wednesday, September 16, 2020 at 12:00 p.m., on the virtual meeting platform Cisco Webex. The sole witness for this hearing will be as follows:

- **The Honorable Dr. Mark A. Calabria**, Director, Federal Housing Finance Agency

Background

The COVID-19 pandemic has harmed many homeowners and renters, and pushed the United States economy into a recession.¹ Over 8.4 million homeowners are behind on their mortgage payments,² another 3.6 million homeowners have entered into forbearance,³ and nearly 8.2 million renters are behind on rent⁴ with at least 46,758 evictions having been filed since the outset of the pandemic in just 17 U.S. cities.⁵ Mortgage rates have reached an all-time low⁶ following a series of cuts to federal interest rates by the Federal Reserve Bank that were intended to offset unstable market conditions created by the global spread of COVID-19.⁷ Yet, many consumers have been unable to access these rates because of high demand and low capacity among lenders when rates first began to decline in March and April,⁸ and because of regulatory decisions.

FHFA has regulatory oversight over Fannie Mae and Freddie Mac (collectively, “the Enterprises”). The Enterprises are charged with providing stability to the secondary mortgage market, responding appropriately to the private capital market, providing ongoing assistance to the secondary market and increasing access to credit, including for low- and moderate-income families, central cities, rural areas, and underserved areas, by increasing liquidity and improving the distribution of investment capital.⁹ In times of economic crisis, the Enterprises function in a countercyclical manner by ensuring access to mortgage credit when the private sector pulls back from the market. FHFA also regulates the 11 Federal

¹ The National Bureau of Economic Research, “[Determination of the February 2020 Peak in US Economic Activity](#),” Jun 8, 2020.

² U.S. Census Bureau, “[Week 13 Household Pulse Survey: August 19 – August 31](#),” Sep 9, 2020.

³ Mortgage Bankers Association, “[Share of Mortgage Loans in Forbearance Declines to 7.16%](#),” Sep 8, 2020.

⁴ *Id supra* note 2.

⁵ Eviction Lab, “[Eviction Tracking](#),” Sep 5, 2020.

⁶ Bankrate, “[Mortgage rates hold steady at new record low](#),” Aug 26, 2020.

⁷ New York Times, “[Fed Makes Emergency Rate Cut, but Markets Continue Tumbling](#),” Mar 3, 2020.

⁸ Housing Wire, “[Mortgage rates are lower than ever, but are lenders keeping them from going even lower?](#),” Mar 6, 2020.

⁹ The [Federal National Mortgage Association, Charter Act](#) and the [Federal Home Loan Mortgage Corporation, Corporation Act](#).

Home Loan Banks (FHLBanks), which provide liquidity to FHLBank members¹⁰ in the form of low-cost loans collateralized by mortgages held in portfolio or other eligible sources of collateral, known as “advances.”

The Federal Housing Finance Agency’s Response to the COVID-19 Pandemic

Foreclosure and Eviction Moratoria

In response to the pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020. The foreclosure moratorium under the CARES Act, which expired on May 17, 2020, included single-family properties with Enterprise-backed mortgages. FHFA has extended the equivalent of this foreclosure moratorium for Enterprise-backed single-family homes until the end of the year.¹¹ The eviction moratorium under the CARES Act, which expired on July 25, 2020, included renters and homeowners in single-family, multifamily, and real estate owned properties with Enterprise-backed mortgages. FHFA has administratively extended an eviction moratorium for Enterprise-backed single-family homes until the end of the year,¹² but despite language in FHFA’s initial press releases that implied renters in such properties would be protected from eviction,¹³ FHFA has since clarified that the only renters covered by this moratorium are those in Enterprise-owned properties, which includes less than 500 renters.

Later, in June, FHFA approved forbearance period extensions for multifamily property owners with Enterprise-backed mortgages. However, multifamily owners who receive forbearance extensions must continue to provide CARES Act tenant protections to renters living in such properties.¹⁴ While FHFA has created a new database to help renters find out whether they are living in Enterprise-backed properties,¹⁵ there is no way for renters to verify whether or not the mortgage on their property is in forbearance. Under FHFA’s policy, multifamily property owners receiving new or modified forbearance would be required to notify their tenants that the mortgage is in forbearance and about the tenant protections associated with that status, but FHFA relies on the self-certification of owners that they have provided such notice.¹⁶

Forbearance and Servicer Responsibilities

The CARES Act includes relief measures for borrowers who are unable to make their mortgage payments due to a COVID-19 related hardship through forbearance and foreclosure protections.¹⁷ However, according to a survey by the FHFA Inspector General (IG),¹⁸ there was “incomplete and/or unclear information about forbearance and repayment on 14 of the 20 websites of the large servicers and generally limited to no information on forbearance and repayment on the remaining 40 websites.” The IG further reported that neither of the Enterprises “views its responsibilities to include testing whether its servicers comply with legal and regulatory requirements” and that “neither Enterprise has collected data sufficient to permit an assessment of whether servicers are complying with the CARES Act and

¹⁰ As of December 2019, FHLBank membership is comprised of 6,739 commercial banks, savings associations, credit unions, insurance companies, and some housing providers, such as state and local housing authorities.

¹¹ FHFA, “[FHFA Extends Foreclosure and REO Eviction Moratoriums](#),” Aug 27, 2020.

¹² Id.

¹³ FHFA, “[FHFA Extends Foreclosure and Eviction Moratorium](#),” May 14, 2020.

¹⁴ FHFA, “[FHFA Provides Tenant Protections](#),” Jun 29, 2020.

¹⁵ Consumer Financial Protection Bureau, “[CFPB, FHFA, & HUD Launch Joint Mortgage and Housing Assistance Website for Americans Impacted by COVID-19](#),” May 12, 2020.

¹⁶ FHFA, “[Multifamily Property Owners in Forbearance Now Required to Inform Tenants of Eviction Suspension and Tenant Protections](#),” Aug 8, 2020.

¹⁷ Pub. L. No. 116-136, §§ 4022(b)(1) & (c)(2) (2020).

¹⁸ FHFA Office of Inspector General, “[Oversight by Fannie Mae and Freddie Mac of Compliance with Forbearance Requirements Under the CARES Act and Implementing Guidance by Mortgage Servicers](#),” Jul 27, 2020.

implementing guidance.”¹⁹

While borrowers are in forbearance, mortgage servicers are required to advance principal and interest payments to investors holding mortgage-backed securities. Servicers are also obligated to advance taxes and insurance premiums. With the millions of federally-backed loans now in forbearance provided under the CARES Act, servicers may not have the funds to continue to advance these payments. To address potential liquidity concerns, FHFA announced on April 21, 2020, that servicers would only be required to advance four months of missed principal and interest.²⁰ While this addresses principal and interest advances, servicers are still required to advance tax and insurance payments using their own funds.

Penalties on Purchases of Loans in Forbearance

Prior to the pandemic, the Enterprises prohibited the purchase of mortgages in which borrowers entered into forbearance after closing but before lenders could sell the mortgage to one of the Enterprises.²¹ Under normal economic circumstances, such an early request for forbearance was rare and potentially an indication of a poorly underwritten loan, but during the pandemic, such early requests for forbearance have become more common and are more likely an indication of the broader economic uncertainty than poor underwriting. FHFA approved flexibilities for Fannie and Freddie policies on April 22 to temporarily allow for the purchase of some loans in forbearance;²² however, the policy flexibilities exclude cash-out refinances and mortgages that are more than 30 days delinquent, and impose a 500-700 basis point penalty on qualifying mortgages. Under this new policy, if a borrower closed on a mortgage and requested forbearance before their mortgage was sold to one of the Enterprises, the lender faces a risk that it would either have to retain the mortgage on portfolio or pay a steep penalty. To guard against this risk, many lenders began imposing higher costs or limiting the loans made to borrowers posing a higher credit risk, thus limiting access to credit at a time when borrowers and the economy needed it most.²³ Further, borrowers who may have been expecting to be protected by forbearance provisions under the CARES Act could also end up losing out on those protections if the lender chose to hold the loan in portfolio to avoid the penalties because the CARES Act only covers federally backed loans.

Despite calls from industry, advocates, and Members of Congress to remove the steep penalties associated with loans that go into forbearance prior to purchase,²⁴ FHFA extended its temporary policy until September 30, 2020 without any adjustments to pricing.²⁵

Penalties on Refinance Transactions

On August 12, 2020, Fannie²⁶ and Freddie²⁷ announced that FHFA had approved their request to impose a 50 basis point fee on lenders that would apply to most refinance transactions for Enterprise-backed mortgages. The Mortgage Bankers Association estimated that this new fee would cost the average borrower \$1,400 over the life of the loan.²⁸ The new fee was set to apply to refinanced mortgages delivered on or after September 1, 2020, but after widespread criticism from industry, advocates, and even the White

¹⁹ Id.

²⁰ FHFA, “[FHFA Addresses Servicer Liquidity Concerns, Announces Four Month Advance Obligation Limit for Loans in Forbearance](#),” Apr 21, 2020.

²¹ See e.g. Freddie Mac Single-Family Seller/Servicer Guide, Sections [4201.1](#) and [4201.2](#).

²² FHFA, “[FHFA Announces that Enterprises will Purchase Qualified Loans in Forbearance to Keep Lending Flowing](#),” Apr 22, 2020.

²³ HousingWire, “[Mortgage rates are lower than ever, but are lenders keeping them from going even lower?](#),” Mar 6, 2020.

²⁴ See, Mortgage Bankers Association, “[MBA Statement on FHFA’s Announcement on Purchasing Qualified Loans in Forbearance](#),” Apr 22, 2020; National Housing Conference, “[Calling for HUD and FHFA to reverse recent policy changes regarding the treatment of mortgages](#),” Jun 24, 2020; and, U.S. House Financial Services Committee, “[Waters, Clay and Vargas Urge HUD and FHFA to Amend Policies that are Reducing Access to Mortgage Credit for People of Color](#),” Jun 25, 2020.

²⁵ FHFA, “[FHFA Further Extends Buying Loans in Forbearance & COVID-Related Loan Processing Flexibilities](#),” Aug 26, 2020.

²⁶ Fannie Mae, “[Lender Letter \(LL-2020-12\)](#),” Aug 12, 2020.

²⁷ Freddie Mac, “[Bulletin 2020-32](#),” Aug 12, 2020.

²⁸ Mortgage Bankers Association, “[MBA Statement on the GSEs’ Adverse Market Refinance Fee](#),” Aug 12, 2020.

House,²⁹ FHFA delayed the effective date until December 1, 2020 and exempted mortgages under \$125,000 and for lower down payment products such as Home Possible and Home Ready products.³⁰

Advocates have argued that this decision is at odds with the Enterprises' missions to play a countercyclical role and expand access to credit during economic downturns.³¹ Other critics have argued that FHFA is inappropriately offsetting the intended impact of \$2 trillion in taxpayer funded stimulus spent by the Federal Reserve to purchase Enterprise-backed securities and debt to help drive mortgage rates to historic lows and help homeowners during this crisis.³² Refinance transactions made up nearly 63 percent of all mortgage application activity as of August 21, 2020 as many homeowners sought to take advantage of historically low interest rates.³³ The Enterprise CEOs have argued that their actions have been consistent with their countercyclical role, and that the fee will only result in a small reduction in savings for the average homeowner if lenders choose to pass on the entire cost, which they may not.³⁴

Capital Rulemaking During a Pandemic

Director Calabria's top priority is to release the Enterprises from federal conservatorship.³⁵ On May 20, 2020, FHFA took a major step towards this goal by releasing a re-proposed capital rule with a 60-day comment period.³⁶ In general, the proposal seeks to align Enterprise capital requirements and the capital back-stop leverage ratio with bank capital requirements and require the Enterprises to hold more capital than is needed to account for the Enterprises' current risk, as shown by recent stress-testing,³⁷ or what would have been needed withstand the 2008 downturn.³⁸

Several public comment letters on this rule have raised concerns that applying bank-like capital requirements is inappropriate because the Enterprises' business models are fundamentally different from private banks, and the Enterprises have mission-driven charters.³⁹ Many have also raised concerns that this proposed rule would run directly contrary to the countercyclical role of the Enterprises by requiring them to build more capital during downturns and thereby contract from the market, and allowing them to expand their investments and market share during favorable market conditions.⁴⁰ Analysts predict that this proposal would shrink the Enterprises' footprint, resulting in market restrictions that would lead to price inflation, and ultimately less access to credit for underserved borrowers, such as borrowers of color and low- and moderate-income borrowers.⁴¹ Several commenters have also raised concerns that this proposed capital rule would reduce incentives for the Enterprises to engage in credit risk transfers (CRTs),⁴² which have allowed the Enterprises to transfer significant risk to the private market over the years.

Federal Home Loan Banks (FHLBanks)

FHLBank advances are primarily intended to fund residential housing finance as well as small business and community development activities. In times of economic turmoil, the FHLBanks play a

²⁹ Wall Street Journal, "[Trump Administration Criticizes New Fannie Mae, Freddie Mac Mortgage Fee](#)," Aug 13, 2020.

³⁰ FHFA, "[Adverse Market Refinance Fee Implementation now December 1](#)," Aug 25, 2020.

³¹ National Fair Housing Alliance, "[Advocates Say FHFA's Delay of Fannie & Freddie Mortgage Refinancing Fee is a Necessary Yet Utterly Insufficient Step for Struggling Homeowners](#)," Aug 26, 2020.

³² Washington Post, "[Families need a lifeline, but Trump's regulator tosses them an anchor](#)," Aug 14, 2020.

³³ Mortgage Bankers Association, "[Mortgage Applications Decrease in Latest MBA Weekly Survey](#)," Aug 26, 2020.

³⁴ Fannie Mae, "[Providing Unprecedented Liquidity and Stability to the Mortgage Market Throughout the Crisis](#)," Aug 19, 2020.

³⁵ American Banker, "[Fannie and Freddie will likely exit conservatorship by 2024, Calabria says](#)," Nov 13, 2019.

³⁶ RIN-2590-AA95

³⁷ FHFA, "[FHFA Announces Results of Fannie Mae and Freddie Mac Dodd-Frank Act Stress Tests](#)," Aug 15, 2019.

³⁸ Center for Responsible Lending, "[Comment to the Federal Housing Finance Agency on Enterprise Regulatory Capital Framework](#)," Aug 31, 2020.

³⁹ See e.g. U.S. Mortgage Insurers, "[FHFA's Re-Proposed Rule on a New Enterprise Regulatory Capital Framework: A comment letter from U.S. Mortgage Insurers](#)," Aug 31, 2020.

⁴⁰ Urban Institute, "[FHFA's Capital Rule Is a Step Backward](#)," Jul 2020.

⁴¹ Id *supra* note 31.

⁴² Reinsurance Association of America et al., "[Insurance Trades Letter FHFA Proposed Capital Rule](#)," Aug 31, 2020.

countercyclical role by providing increased liquidity to banks. In order to provide more liquidity to its members, FHFA recently announced that the FHLBanks could accept Paycheck Protection Program (PPP) loans through the Small Business Administration as collateral to extend advances.⁴³ However, critics have argued that FHFA's requirement that FHLBanks impose a 10 percent collateral discount⁴⁴ and cap lendable collateral at \$5 billion, limits the collateral value of PPP loans.⁴⁵

Legislation

- **H.R. 6800**, the “Heroes Act,” provides several measures, including a broad eviction and foreclosure moratorium, to stabilize the housing market during the pandemic.
- **H.R. 6729**, the “COVID-19 Homeowner Assistance Fund Act” (Scott) provides \$75 billion for states, territories, and tribes to address the needs of struggling homeowners because of the pandemic.
- **H.R.6741**, the “COVID-19 Mortgage Relief Act” (Clay) expands the CARES Act foreclosure and forbearance protections to cover all homeowners and rental property owners.
- **H.R.6794**, the “Promoting Access to Credit for Homebuyers Act” (Vargas) prevents the Enterprises and FHA from imposing additional restrictions or costs on borrowers who have inquired about, requested, or received forbearance during the pandemic.
- **H.R. 7402**, the “Protecting Renters from Eviction and Fees,” (C. García) extends the federal CARES Act eviction moratorium to March 27, 2021 and would also expand the moratorium to cover substantially all renters.

⁴³ FHFA, “[Paycheck Protection Program \(PPP\) Loans as Collateral for FHLBank Advances](#),” Apr 23, 2020.

⁴⁴ A collateral discount, or haircut, means that if a PPP loan is valued above 100 percent of the unpaid principal balance, it will lose 10 percent of its market value to account for risk.

⁴⁵ ABA Banking Journal, “[FHFA: FHLBs May Purchase PPP Loans as Collateral for Advances](#),” Apr 23, 2020.