

HOUSING FINANCE REFORM: THE STARS ARE ALIGNING

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By: Daniel F. C. Crowley, William A. Kirk, Karishma Shah Page, Dean A. Brazier, Eric A. Love, Bruce J. Heiman

INTRODUCTION

Housing finance reform, one of the elusive, last remaining to-do items on the post-Great Recession list, may finally be addressed during the first half of 2018. Over the last few years, Congress has been setting the stage with numerous hearings, bills and studies. Now, there is growing agreement on workable principles of reform. Housing finance reform legislation, which will likely follow consideration of a separate financial regulatory reform bill, has garnered renewed interest and prioritization among a number of key Members of Congress who seek to enact legacy measures before the window for major legislative action closes prior to this year's mid-term elections.

STATE OF PLAY

Senate

Last month, Senators Bob Corker (R-TN) and Mark Warner (D-VA), long-time proponents of housing finance reform who are leading the bipartisan reform effort in the Senate, circulated a proposal for vetting by other Senators and Trump Administration officials. Senator Corker announced that he will be retiring at the end of the current term of Congress, but he will likely continue to play a meaningful role in helping to formulate the Senate proposal.

The Corker-Warner proposal contains the following features: a federal government guarantee in the event of catastrophic losses (financed by a fee on mortgages); Fannie Mae and Freddie Mac (collectively, the "GSEs") would continue to exist under government conservatorship until competitors enter into the securitization market for mortgage loans; the GSEs would no longer have government charters and their investment portfolios would be nearly eliminated; the government would approve pricing and returns, thereby reducing the incentive for risky lending; and certain market reforms already put in place by the Federal Housing Finance Agency ("FHFA") would be codified in law.

Senate Banking Committee Chairman Mike Crapo (R-ID) is also expected to release additional details about his proposed housing finance reform legislation. It is not yet clear which elements of the Corker-Warner proposal will be included in the proposal that Chairman Crapo is expected to release. Many anticipate that Chairman Crapo's proposal would broaden participation in the Common Securitization Platform ("CSP") beyond the GSEs. The CSP will be used by the GSEs to issue a common single mortgage-backed security.

Importantly, with the announcement by Senate Finance Committee Chairman Orrin Hatch (R-UT) that he will retire from the Senate at the end of the year, Chairman Crapo is a potential successor as the top Republican on the Finance Committee (unless Senator Chuck Grassley (R-IA) gives up his remaining two years as Chairman of the Senate Judiciary Committee). Given this possibility and Chairman Crapo's stated view that housing finance reform is one of his top priorities, he is expected to push forward aggressively on reform.

House

Two key developments occurred last year. First, House Financial Services Committee Chairman Jeb Hensarling (R-TX) announced that he will retire from the House at the end of this term of Congress. Second, Chairman Hensarling delivered a speech that represents a turning point for him in the years-long discussion about how to approach reform of the housing finance system. The Chairman put forward views that were in line with positions of other key policymakers. In this speech, Chairman Hensarling stated that he fully expects that a government guarantee in the secondary mortgage market will be part of any successful attempt at housing finance reform. Additionally, he characterized a proposal offered by former FHFA Acting Director Ed DeMarco and Ginnie Mae Executive Vice President Michael Bright as a means by which to move housing finance reform forward.

According to Chairman Hensarling, "the DeMarco-Bright proposal would provide a new explicit government guarantee for mortgages by revising the Ginnie Mae charter to authorize it to accept mortgages with non-government credit enhancements from the private sector." Just as importantly, he expressed his opinion that "any sustainable housing finance reform plan" must be consistent with the following principles: the GSEs "must be wound down and their charters repealed;" "[s]ecuritizers need strong bank-like capital and community financial institutions must be able to compete on a level playing field;" "[a]ny new government affordable housing program needs to at least be on budget, results based, and target actual homebuyers for the purpose of buying a home they can actually afford to keep;" and "[t]he Federal Housing Administration must return to its traditional role of serving the first-time homebuyer and low- and moderate-income individuals."

Moreover, House Financial Services Housing and Insurance Subcommittee Chairman Sean Duffy (R-WI) and Ranking Member Emanuel Cleaver (D-MO) have begun working together on housing finance reform, and the Subcommittee has convened a series of hearings focused on private-sector perspectives on the issue. During the Subcommittee hearings, Republicans have emphasized the need to consider ways to bring additional private capital into the housing finance system by making the rules of the system more transparent and enforceable. Others have expressed support for allowing the government to provide certainty in the market through a federal guarantee at the catastrophic-risk level. Democrats have expressed strong support during the hearings for preserving the 30-year fixed-rate mortgage; preserving housing affordability; protecting taxpayers; furnishing stability and liquidity to the market; and ensuring access to small lenders. The bipartisan House efforts have also included a number of informal information-gathering meetings with stakeholders and other interested parties. Chairman Hensarling's views can be expected to significantly impact the efforts undertaken by Chairman Duffy and Ranking Member Cleaver to craft bipartisan reform legislation.

For a discussion of previous iterations of the Senate Corker-Warner proposal and House reform legislation (the Protecting American Taxpayers and Homeowners ("PATH") Act) previously championed by Chairman Hensarling, please see the K&L Gates Alert entitled "The 2014 Election: A Critical Juncture in Financial Services Legislation, Regulation, and Oversight."

WHAT HAPPENS NEXT?

Housing finance legislation is likely to be considered in both chambers of Congress within the next six months. Among the key questions facing lawmakers is the issue of whether to adopt the DeMarco-Bright-Hensarling "issuer-model" or the Corker-Warner "guarantor model" whereby the GSEs would be reformed and repurposed as guarantors which, along with new entrants to the market authorized by the FHFA, would issue mortgage-backed securities that carry an explicit government guaranty. Additionally, lawmakers will continue to grapple with the extent to which affordable housing requirements will be included in any reform legislation. As discussions on these and other issues move forward and as legislative proposals develop, interested stakeholders must engage now in order to achieve their particular policy objectives.

KEY CONTACTS



DANIEL F. CROWLEY
PARTNER
WASHINGTON DC
+1.202.778.9447
DAN.CROWLEY@KLGATES.COM



BRUCE J. HEIMAN
PARTNER
WASHINGTON DC
+1.202.661.3935
BRUCE.HEIMAN@KLGATES.COM



WILLIAM A. KIRK
PARTNER
WASHINGTON DC
+1.202.661.3814
WILLIAM.KIRK@KLGATES.COM



KARISHMA S. PAGE
PARTNER
WASHINGTON DC
+1.202.778.9128
KARISHMA.PAGE@KLGATES.COM



DEAN A. BRAZIER
ASSOCIATE
WASHINGTON DC
+1.202.778.9177
DEAN.BRAZIER@KLGATES.COM

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