GSE Activity Report

Thursday, September 27, 2018

Mrs. Warren's Proposal

Summary

Several of you have expressed surprise that S. 3503, the sweeping housing-reform legislation introduced on Wednesday by Sen. Warren, doesn't address GSE or FHFA reform. We don't think it has to. Sen. Warren doubtless intends the bill as a meaningful political – not necessarily policy – proposal. This may play well now in Massachusetts and next year on the national stage. However, no matter what, the bill is a marker for what progressives will demand if GSE-reform legislation moves through regular order regardless of who controls which House of Congress.

Impact

Clients will recall that the 2014 efforts to reform the GSEs foundered when progressive Democrats refused the-then Democratic Senate Banking Chairman's efforts to pass a bipartisan bill. The reason: lack of affordable-housing provisions and fears about large-bank control of the new securitization structure. The new Warren bill doesn't take on these issues directly because it aims at the still more enormous targets of overall housing subsidy, zoning, and affordability challenges. Provisions here include an array of new subsidies for LMI borrowers and renters along with federal demands on state zoning and land-use officials, with all of the costs here offset by a spike in the estate tax.

What this means in the GSE context is, ironically enough, presaged in the new Hensarling draft – would be to require those using the "new Ginnie" structure to pay an affordable-housing fee. If it's deployed for Warren's down payment, subsidy, and related housing-support programs, then a GSE-reform plan without explicit affordable-housing goals might well be more readily accepted by progressive and community activists. However, to meet Warren's goals, the fee would also have to be ginormous, raising another political problem.

The Warren approach to Community Reinvestment Act reform is also sure to resurface if housing-finance legislation advances. Given the antipathy with which Secretary Mnuchin and Comptroller Otting will view Warren's approach, it's yet another reason the Administration may well preempt Congressional action if Democrats gain strength after the mid-term.

The Administration's problem with the Warren bill is not that it expands CRA obligations to non-banks and credit unions – in another irony, Treasury's CRA report also calls for expanded community-reinvestment responsibilities. It also isn't that Warren expands CRA to small-business lending – many (ourselves included) think that CRA would be considerably more meaningful if it went beyond housing. The OCC's advance notice of proposed rulemaking on CRA raises this issue, although it takes no immediate stand on it.

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The problem with Warren's CRA provisions is their sharp teeth. CRA ratings would be a transparent process open to public comment, a process that takes the CRA considerations that come into play during M&A and expands them across the entire business life-cycle of a covered institution. Non-banks would be under similar standards to make mortgage loans, engage in small-business lending, support community development, and be exposed to significant strategic risk and public attack from the CFPB if their CRA actions fall short of the mark. To be sure, this section of the bill has some major drafting issues – it appears to assume that non-banks want to take deposits – but its aspirations are clear and will surely give many in the industry an extreme case of the willies.

Outlook

Is Mrs. Warren's proposal a serious initiative or a political statement now and next year? We shall see, but its specifics and overall approach are well thought out, backed by an organized coalition, and certain to be taken seriously.

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