GSE Activity Report

Tuesday, February 1, 2022

CFPB Goes for the Jugular

Summary

Nothing could do as much damage to a business based on fee revenue as a determined CFPB inquiry into fee revenue. Last Thursday, the Bureau's new director, Rohit Chopra, launched just such an inquiry. Here, we assess its important to mortgage origination and servicing along with what's next.

Impact

As a forthcoming in-depth FedFin report will detail, the Bureau's anti-fee fusillade barrage came in these seemingly-innocuous form of a request for information (RFI). However, the assumptions on which the RFI's questions are posed are damning, if not always or even all that often substantiated by data. In fact, the only back-end fees the RFI definitively accuses of deception are hotel "resort" fees; even then, the RFI only describes a problematic lack of transparency, not also the collusion one would think necessary to support its assertions that many back-end fees not only disadvantage consumers, but also evidence undue market power housed at the largest providers.

None of this is, though, slowing the Bureau down. The RFI includes a damming description of mortgage-related fees, arguing that mortgages come packed with "thousands" in fees which consumers cannot adequately judge or control by seeking a lower-cost competitor. One criticism of these fees is that they strip borrowers of equity and inhibit refis, adversely affecting economic equality. The RFI also expressly cites title insurance as a particularly problematic fee even though its ability to regulate, supervise or enforce in this sector is limited. The same is true of MI, but this doesn't mean that the Bureau won't go after either of these insurance products by way of the lenders who choose them

Servicing fees are addressed with particular vituperance, with the RFI citing an array of inquiry, bill-pay, and late fees said to have characteristics similar to bank overdrafts that come in for castigation all their own. The key point with regard to all of these mortgage-related fees is the one stressed throughout the RFI: financial-service providers who charge more than what the Bureau thinks a just margin above costs and risks is a profiteer benefiting from undue market power.

Although the overall RFI is focused on fair competition, the mortgage-fee discussion is principally aimed at consumer protection, racial equity, and wealth equality. Large banks are the overall target of the Bureau's efforts, but they are also a diminishing part of the mortgage origination or servicing arena. It is thus unclear what the Bureau could do to break up mortgage banks to obtain the remedies for which it calls, but that's not to say that it won't give it a go. MSR purchasing is a relatively concentrated market and thus perhaps where the Bureau might aim its first fusillade if it chooses to focus on market power, not the consumer-protection objectives it can advance via targeted enforcement actions.

Outlook

Comment is due by March 31, with the Bureau going far out of its way to encourage consumers to send

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in tales of woe linked to any and all of the fees they pay. Thus, the most immediate risk to mortgage companies is likely reputational; the longer-term one is first the extent to which the Bureau goes beyond current rule to set fee-based standards designed to limit "excess profit." The second market impact comes from the extent to which the FHFA and HUD, by way of their equitable-finance initiatives, use their direct regulatory power over this sector to stipulate fees so far left solely to banker, broker, and servicer discretion.

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