Equality-Oriented Mortgage Finance

Cite
CFPB, Request for Information Regarding Mortgage Refinances and Forbearances

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Impact Assessment

- CFPB enforcement actions are likely targeting refis found to have the anti-consumer features described in the RFI.
- Unless the CFPB takes administrative action, regulatory changes necessary to facilitate new refi products will take months, if not years, to finalize, slowing the pace of change unless FHFA or HUD speed it up by creating new secondary markets under their equitable-finance plans.
- Mandatory, automatic forbearance will also take a considerable amount of time to finalize via rulemaking unless the GSEs or HUD mandate them.

Overview

The CFPB has asked for views on the extent to which it can facilitate certain refinancing (refi) products it believes enhance economic justice. It has also identified refi features it believes put consumers – and especially vulnerable ones – at undue risk, identifying alternative products that it believes would significantly advantage these households. The agency is also looking to encourage or even require automatic forbearance to increase borrower protection in the event of widely shared stress or personal hardship, although it could also be costly to servicers and investors depending on how any such program is designed.

Impact

As stipulated in both this request for information (RFI) and the release accompanying it, the CFPB believes that "transparent and competitive" markets would allow borrowers to readily and easily refinance their mortgages, even if the loan has a small balance. The RFI also lays out the economic-equality rationale for making it easy for borrowers to avoid delinquency or default when there are temporary disruptions in the economy or their own lives. It is unclear if the Bureau believes it has the authority to remedy these harms by mandating that lenders offer specific products or take requisite action under specific conditions, but it appears to contemplate deploying its authority to this effect. The agency has already taken steps clearly authorized in law to govern how mortgage servicers must act when borrowers enter delinquency,[1] and it may thus find statutory grounds for expanding on these borrower-risk mitigation and loan-modification standards with an additional requirement for mandatory forbearance. However, its authority to mandate specific product types and terms is uncertain and could also be considered a form of credit allocation or even market/price control, not just the boost to market competition the CFPB envisions.

The RFI also details an array of regulatory impediments to refis and loan modifications that, if remedied, could create a deeper market for loans that enhance wealth accumulation in falling-rate scenarios for vulnerable households and first-time homeowners. Eliminating these barriers to mortgages that increase household financial resilience and wealth accumulation would be of considerable benefit to affected borrowers and their communities. It would also provide added revenue to primary and/or secondary-market participants if new products come without undue risk or cost.

It is less clear that the “one-way” ARMs and other products contemplated by the Bureau are feasible in the primary and/or secondary markets, although it is possible that collaborations between the CFPB and FHFA and Ginnie Mae could create a new market if this inquiry suggests product viability as well as desirability.

However, the longer the GSEs engage in products posing new risks or costs, their larger social impact may come at cost to ever exiting conservatorship. Costs to FHA could also result in higher FHA premiums across the market that increase the cost of home ownership for borrowers not participating in these targeted programs.

What’s Next

This RFI was released on September 22, with comments due sixty days after *Federal Register* publication, likely by November 26 if the RFI is published on September 27 as anticipated by the CFPB. The Bureau’s next actions may recommend or even demand that lenders offer products such as the one-way ARM or mandatory forbearance because the analysis it requests is almost exclusively focused on borrower and community factors, not those germane to market participants. However, unless the Bureau crafts initiatives that facilitate new products then likely to be viable in the marketplace, it may face challenges achieving its goals. Even if it decides to enhance the odds of success with mandatory programs, those designed without market understanding are likely eventually to founder at possibly considerable cost to lenders, investors, and even borrowers. Ongoing discussions with FHFA, HUD, and the Administration will determine the extent to which the GSEs and FHA or VA participate in or even mandate some of the actions explored by the CFPB as will action by the Justice Department and FTC under the Administration’s competition initiative.

[1] See **MORTGAGE110**, *Financial Services Management,* January 10, 2013.

Analysis

The RFI seeks views on products and policy considerations such as:

- the benefits of targeted, streamlined refis such as those reducing documentation or underwriting requirements for loans that lower monthly payments and come without undue fees. These products could also limit or bar cash-out;
- the need for options to encourage more beneficial loans, including revision to the Bureau's qualified-mortgage (QM) rule;[2] desirable new refi products, with the CFPB exploring loans offering lower closing costs for future refis or with automatic refi triggers or lower rates. The Bureau seeks comment on consumer risks and benefits and lays out ways to address the consumer risks it cites. These might include a "one-way ARM,"; and
- forbearance and loss mitigation, with the Bureau seeking comment on a range of automatic or streamlined options. It is particularly interested in ways to make aspects of the Covid forbearance program a permanent market feature, with particular focus on natural-disaster relief.

Specific questions for comment also address:

- quantitative and qualitative barriers to low rates and how to reduce them with a focus on specific borrower types (e.g., those with small balances, service members, the elderly, first-time homeowners);
- the impact of fixed costs on refis and the extent to which common risk factors (e.g., LTV) create refi barriers;
- the impact of certain creditor types in some geographic areas;
- ways the Bureau can facilitate industry efforts to offer targeted, streamlined refis and new products, with the Bureau particularly interested in whether one-way ARM protections for consumers can be left to the market or should be regulated. The CFPB is also interested in comments on how auto-refis would affect the MBS market and in ways it rules could encourage them;
- the need for express borrower protections in refis;
- additional new products that promote economic equality via reduced interest rates and the extent to which the CFPB and other regulators could encourage them;
- legal impediments to desirable refis; and
- how best to structure and govern short- and long-term automatic loss mitigation and define their triggers. Questions are also posed on the interaction of these options with current servicing regulation.

[2] See **MORTGAGE114**, *Financial Services Management*, July 30, 2019.