GSE Activity Report

Friday, March 15, 2024

Fees on the Firing Line

Summary

If it wasn't clear before that the CFPB's blog post targeting "junk" mortgage fees meant business, NEC Director Brainard's comments endorsing it brought this on home. No matter the controversy and litigation, the Bureau has toppled credit-card late fees at least for now. It clearly plans a like-kind assault on mortgage costs, so we here turn to an analysis of which are on the firing line and how deadly the Bureau's shots are likely to prove.

Impact

First to the fees the CFPB expressly targets:

- Discount Points: These are clearly the agency's most immediate priority. That these went up starting in 2022 is no accident given that rates also began to rise, but the Bureau is also irate because the cost of discount points also went up. This may also be the impact of higher rates that lead consumers to pick deeper discounts, but the blog post asserts that these points actually may not reduce borrower costs. Battle lines will clearly form on each side of this argument, with the likely result from the CFPB being a new disclosure of the relationship between points and alternative mortgages without them along with a declaration that discount points without demonstrable discount effect are an UDAAP. See the CFPB's new ban on what it considers biased credit-card comparison-shopping and digital-lead generation processes as a precedent for what's likely next for discount points.
- Title Insurance: As clients know well, FHFA has promoted Fannie's initiative curtailing lender title insurance. The President then went considerably farther pressing sharp fee reductions in his State of the Union, a point then emphasized by NEC Director Brainard. Could the CFPB simply ban requiring borrowers to pay for lender title insurance? Given the sweep and scope of CFPB actions in other sectors, this is certainly possible, subsequent litigation notwithstanding.
- Credit-Score Reports: Here, the Bureau may side with lenders, putting pressure on the credit-reporting agencies it also governs to force down fees is.

Outlook

What else might well come up? The Bureau has its hands full with the fees its targeted, but more than a few people in the mortgage sector are also gunning for primary MI premiums. The Bureau does not have statutory authority to regulate MI, but it does have the power to define how lenders shop for it, moves that could give GSE self-insurance efforts a big boost along with the growing use of credit-linked notes and other capital-market instruments if FHFA decides these meet statutory requirements for HLTV credit enhancement.

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