Novogradac
Journal of Tax Credits
News, Analysis and Commentary On Affordable Housing, Community Development and Renewable Energy Tax Credits
March 2018 • Volume IX • Issue III
Published by Novogradac & Company LLP

Draft Senate GSE Reform Bill Would Scale Back Affordable Housing Lending

BUZZ ROBERTS, NATIONAL ASSOCIATION OF AFFORDABLE HOUSING LENDERS

A widely leaked draft Senate bill would overhaul the secondary mortgage market and scale back commitments to affordable mortgages.

Offices of the senators working on the draft, Bob Corker, R-Tenn., and Mark Warner, D-Va., say the draft is not final and neither senator has formally committed to it.

The draft bill is the newest attempt at housing finance reform, the last big unfinished business of financial system reform in the aftermath of the Great Recession. After the Federal Housing Finance Agency (FHFA) took Fannie Mae and Freddie Mac–the so-called government sponsored enterprises, or GSEs–into conservatorship in 2008, the Treasury Department invested $187 billion to keep them operating and to support the housing market. The GSEs since returned to financial health and paid $271 billion in dividends to Treasury, but they remain in conservatorship.

Under the current system, Fannie Mae and Freddie Mac are required to meet certain affordable housing goals; have additional duties to serve rural communities, housing preservation and manufactured housing; and contribute ($339 million in 2017) to the Housing Trust Fund and Capital Magnet Fund.

In 2018-2020, the goals require that at least 24 percent of the single-family home purchase mortgages the GSEs acquire should serve low-income borrowers; at least 6 percent should serve very low-income borrowers; at least 14 percent should be located in low-income areas; and 21 percent of refinance loans should serve low-income borrowers. The GSEs have developed new products and programs, increased underwriting flexibility, modulated risk-based pricing and formed new partnerships, all in a concerted effort to meet the goals and duties to serve.

continued on page 2

continued from page 1

The multifamily goals require Fannie Mae and Freddie Mac to finance at least 300,000 units affordable to low-income renters each year, including 60,000 units affordable to very low-income renters and 10,000 units affordable to low-income renters in properties with 50 or fewer units. These goals encouraged the GSEs to establish special products to finance subsidized affordable rental housing, including properties with low-income housing tax credits (LIHTCs), as well as initiatives to support energy-efficiency and serve smaller properties.

The Corker-Warner draft would replace Fannie Mae and Freddie Mac with new private "guarantors," which would acquire mortgages from lenders; issue mortgage-backed securities guaranteed by Ginnie Mae and backed by the full faith and credit of the U.S. government; and hold capital sufficient to absorb all but catastrophic losses ahead of the government guarantee.

The draft bill focuses primarily on single-family mortgage finance, providing for the chartering of at least five or six new single-family guarantors, none of which could have a market share exceeding 20 percent to 25 percent.

Once this new competitive market is established, Fannie Mae and Freddie would wind down and go out of business. Single-family guarantors would not have affordable housing goals or duties to serve targeted market segments. However, they would have to accept loans made to low-income borrowers and moderate-income first-time homebuyers, and pay fees to a "market access fund" they could apply to tap to support financing for low-income borrowers. The fees would also support the Housing Trust Fund and Capital Magnet Fund.

As the GSEs wind down, they will spin off their multifamily businesses as independent multifamily guarantors. Other companies could also apply to become multifamily guarantors. Multifamily guarantors would have direct access to Ginnie Mae (i.e., without working through the Federal Housing Administration), provided at least 60 percent of the units they finance are affordable to low-income renters. The total dollar volume of outstanding guaranteed multifamily securities could not exceed the GSEs' current multifamily book–$437 billion as of the third quarter of 2017. Multifamily guarantors would be restricted to securitizing guaranteed mortgage-backed securities, so they could not make LIHTC investments. FHFA recently permitted the GSEs to re-enter LIHTC investment market for the first time since they entered conservatorship; and Fannie Mae has already announced it will invest $100 million through Raymond James.

The Corker-Warner draft raises a number of questions, including:

- Would at least five or six new single-family guarantors enter the market, the trigger for winding down the GSEs? In concept, FHFA could raise the guarantee fee that Fannie Mae and Freddie Mac pay in order or take other steps to invite new competition, even though that would mean higher interest rates for mortgage borrowers. But prospective upstarts would have to raise substantial private capital, scale up enough to achieve efficient operations in a market where basis points matter, attract business from lenders with long-standing relationships with Fannie Mae and Freddie Mac, contend with a new regulatory regime, and hope that enough new competitors emerge so that GSEs would actually go away.
- Would the new system provide home mortgages in all markets in all times? The draft bill does not require the new guarantors to operate nationwide. Would rural areas, low-income neighborhoods or other markets be disadvantaged? Would guarantors pull

continued on page 3

continued from page 2

back in a national or regional economic downturn, leaving lenders and their borrowers to fend for themselves in times of market stress?

- Would the market access fee be large enough to motivate the guarantors to stretch to reach underserved markets, as well as to adequately support the Housing Trust Fund and Capital Magnet Fund? The 2014 Senate bill was expected to generate $5 billion in fees annually, assuming a $5 trillion secondary market. Would this carrot prove big enough to ensure broad market access without the stick of an affirmative and enforceable obligation to serve?
- Would the new guarantors be tempted to sacrifice safety and soundness in the pursuit of market share and profit, as the GSEs did before the financial/housing crisis, or would FHFA be able to keep them in check? Some observers have proposed that the new guarantors should be treated as utilities subject to regulated profits.

Congressional, Treasury and FHFA leaders all say permanent legislative reform should be a high priority. Conservatorship was supposed to be temporary but is now approaching a full decade. Few policy makers want to see the GSEs return to their pre-crisis status as private companies that are too big to fail, exposing taxpayers to future bailouts. Committees in the House and Senate held multiple hearings last year in anticipation of legislation.

Several recent developments have added some urgency. Two key legislators–Sen. Corker and House Financial Services Committee Chairman Jeb Hensarling, R-Texas–have announced plans to retire at the end of this Congress and the Senate Banking Committee Chair, Mike Crapo, R-Idaho, could leave that post to chair the Finance Committee, replacing the retiring Orrin Hatch, R-Utah. The senator next in line to chair the Banking Committee, Pat Toomey, R- Penn., has been more skeptical of government involvement in housing finance. FHFA Director Mel Watt's term expires next year. The GSEs must draw an additional $4 billion from the Treasury because the new tax reform law reduced corporate rates, in turn reducing the value of the GSEs' deferred tax assets. Although those draws reflect an accounting adjustment, not a decline in the GSEs' economic health, policy makers could cite them as a need to accelerate legislative reforms. ❖

This article first appeared in the March 2018 issue of the Novogradac Journal of Tax Credits.

© Novogradac & Company LLP 2018 - All Rights Reserved

Notice pursuant to IRS regulations: Any U.S. federal tax advice contained in this article is not intended to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties under the Internal Revenue Code; nor is any such advice intended to be used to support the promotion or marketing of a transaction. Any advice expressed in this article is limited to the federal tax issues addressed in it. Additional issues may exist outside the limited scope of any advice provided – any such advice does not consider or provide a conclusion with respect to any additional issues. Taxpayers contemplating undertaking a transaction should seek advice based on their particular circumstances.

This editorial material is for informational purposes only and should not be construed otherwise. Advice and interpretation regarding property compliance or any other material covered in this article can only be obtained from your tax advisor. For further information visit www.novoco.com.

Novogradac
Journal of Tax Credits

EDITORIAL BOARD

PUBLISHER
Michael J. Novogradac, CPA

EDITORIAL DIRECTOR
Alex Ruiz

TECHNICAL EDITORS
Mark Shelburne
James R. Kroger, CPA
Owen P. Gray, CPA
Thomas Boccia, CPA
Daniel J. Smith, CPA

COPY

SENIOR EDITOR
Brad Stanhope

MARKETING MANAGER
Teresa Garcia

SENIOR WRITER
Mark O'Meara

CONTENT MANAGEMENT SPECIALIST
Elizabeth Orfin

CONTRIBUTING WRITERS
Frank Altman
Jerry Breed
Corenia Burlingame
Owen Gray
Peter Lawrence
Scott A. Lindquist
Forrest Milder
Thomas D. Morton
Stephanie Naquin
Jennifer Novak
Buzz roberts
Warren Sebra
Mark Shelburne
Victoria Stein
John Tess
Jason Watkins

ART

CARTOGRAPHER
David R. Grubman

PRODUCTION
Alexandra Louie
James Matuszak
Jesse Barredo

CONTACT

CORRESPONDENCE AND EDITORIAL SUBMISSIONS
Alex Ruiz
alex.ruiz@novoco.com
415.356.8088

ADVERTISING INQUIRIES
Christianna Cohen
christianna.cohen@novoco.com
925.949.4216

EDITORIAL MATERIAL IN THIS PUBLICATION IS FOR INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE CONSTRUED OTHERWISE.

ADVICE AND INTERPRETATION REGARDING THE LOW-INCOME HOUSING TAX CREDIT OR ANY OTHER MATERIAL COVERED IN THIS PUBLICATION CAN ONLY BE OBTAINED FROM YOUR TAX ADVISOR.

ADVISORY BOARD

LOW-INCOME HOUSING TAX CREDITS

Bud Clarke	BOSTON FINANCIAL INVESTMENT MANAGEMENT
Tom Dixon	BOSTON CAPITAL
Rick Edson	HOUSING CAPITAL ADVISORS INC.
Richard Gerwitz	CITI COMMUNITY CAPITAL
Rochelle Lento	DYKEMA GOSSETT PLLC
John Lisella	U.S. BANCORP COMMUNITY DEV. CORP.
Philip Melton	BELLWETHER ENTERPRISE
Thomas Morton	PILLSBURY WINTHROP SHAW PITTMAN LLP
Mary Tingerthal	MINNESOTA HOUSING FINANCE AGENCY
Rob Wasserman	U.S. BANCORP COMMUNITY DEV. CORP.

PROPERTY COMPLIANCE

Michael Kotin	KAY KAY REALTY
Kerry Menchin	CONAM MANAGEMENT CORPORATION
Michael Snowdon	HIGHRIDGE COSTA HOUSING PARTNERS
Gianna Solari Richards	SOLARI ENTERPRISES INC.

HOUSING AND URBAN DEVELOPMENT

Flynann Janisse	RAINBOW HOUSING
Ray Landry	DAVIS-PENN MORTGAGE CO.
Denise Muha	NATIONAL LEASED HOUSING ASSOCIATION
Monica Sussman	NIXON PEABODY LLP

NEW MARKETS TAX CREDITS

Frank Altman	COMMUNITY REINVESTMENT FUND
Merrill Hoopengardner	NATIONAL TRUST COMMUNITY INVESTMENT CORP.
Scott Lindquist	DENTONS
Matthew Philpott	U.S. BANCORP COMMUNITY DEV. CORP.
Ruth Sparrow	FUTURES UNLIMITED LAW PC
Elaine DiPietro	BLOOMING VENTURES LLC

HISTORIC TAX CREDITS

Jerry Breed	BRYAN CAVE LLP
John Leith-Tetrault	NATIONAL TRUST COMM. INVESTMENT CORP.
Bill MacRostie	MACROSTIE HISTORIC ADVISORS LLC
John Tess	HERITAGE CONSULTING GROUP

RENEWABLE ENERGY TAX CREDITS

Bill Bush	STEM INC.
Benjamin Cook	NEXTPOWER CAPITAL
Jim Howard	DUDLEY VENTURES
Forrest Milder	NIXON PEABODY LLP

© Novogradac & Company LLP
2018 All rights reserved.
ISSN 2152-646X

Reproduction of this publication in whole or in part in any form without written permission from the publisher is prohibited by law.