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REGULATION AND COMPLIANCE

The biggest housing policy initiatives for 2024

By Bonnie Sinnock December 18, 2023 4:00 AM

The driving force behind a lot of potential housing policy actions coming in 2024 will be a renewed political appeal to voters and constituencies, including the housing finance sector.

There will likely be a renewed push by the Biden administration around housing-related themes that were prominent in 2023, and action to make those that are at the proposal stage a reality, but also potentially more friction between parties as federal budget negotiations resume next year.

To get a sense of what types of rulemaking the mortgage industry needs to watch out for in 2024, we asked several industry experts what they're expecting to see.

Read on to learn more about some of the main themes in housing policy anticipated next year, and some examples of specific actions within each category that could affect the mortgage business.

Congress, the budget, taxes and insurance

Due to the election-year dynamics and the composition of the current legislature, there are questions about getting bipartisan agreement. Lack of consensus could limit action on housing policy outside of that impacted by pressing budget negotiations, at least at the outset of 2024.

As the mortgage industry well knows, those negotiations can be disruptive to originations, with the largest threat next year potentially springing from uncertainty around the continuation of flood insurance and federal services required in the course of originations.

A prior shutdown in 2019 led to a wave of legislation in some states designed to provide automatic contingencies in the event of future breakdowns in budget negotiations, and a recent Covius report suggests that if there's another impasse next year, more such efforts could arise.

(There's been an attempt to pass legislation at the federal level as well that could be revived.)

Other state and local policies that show signs of looming large for housing and mortgages next year are those related to taxes and insurance charges that have already shown signs of rising in a limited number of jurisdictions.

"We'll start to receive the updated assessment valuations from the different counties across the country over the course of 2024, which we know will translate to higher millage rates and higher billings," said Jim McGurer, senior vice president of operations at Lereta.

Anecdotal evidence suggests the average property tax hike recently has been more on the order of 30% than a historical average of 10%, McGurer said. But he noted that there are exceptions like

Texas, where voters recently approved an $18 billion property tax cut billed as the largest in the Lone Star State's history.

Another potential 2024 policy issue related to funds that lenders escrow on behalf of borrowers is the pending outcome of a Bank of America lawsuit the Supreme Court has agreed to hear that would determine whether national depository legislation preempts state provisions.

The Fed and the CFPB

Any policy changes, or lack thereof, to interest rates or the Federal Reserve's mortgage-backed securities portfolio are perennially at the top of the list of what to watch for. Policy could be more favorable for lenders in an election year, but that might only go so far.

"Mortgage rates might decline, but they could stay high relative to previous years, which would continue to challenge originations," said Jennifer Keys, vice president, compliance solutions, Covius.

Lenders may continue to hope for a response to industry calls for the Fed to take additional steps to support housing through its MBS portfolio. But at the time of this writing it was considered unlikely absent a severe market disruption.

Another thing lenders are keeping an eye out for is additional Consumer Financial Protection Bureau regulation, which could add to loan costs. So how the Supreme Court rules on a challenge to its powers in a decision expected next year is important to watch.

A decision against the CFPB could be a game changer not only for the bureau but for other independent directorships such as that of the Federal Housing Finance Agency. But an early read on it was that the justices involved are skeptical of the challenge.

Absent the court reining the CFPB in, given election year pressures, there's likely to be an intensified raft of both formal and information directives from the bureau.

"I would say we can expect more 'regulation by blog' coming out of the CFPB, not only in the housing finance industry, but the consumer finance industry more broadly," said Jim Milano, a partner at law firm McGlinchey Stafford.

Fair lending actions in the vein of the CFPB and Department of Justice's 2023 warning about not discriminating against customers based on immigration status are likely to be part of that.

New rules for existing and emerging technologies

Fair lending won't be the only thing the CFPB is watching for, but it'll probably be one of the most prominent themes, and will intersect with some technology rules on artificial intelligence and automated valuation models that are on track to move forward next year.

Also, data security has been an issue, so mortgage firms also should watch for new actions there, such as an amendment to Federal Trade Commission rules that becomes effective next year, adding nonbank reporting for incidents affecting 500+ customers.

New technology policy also may help move electronic home-equity lines of credit forward, given how use of those products has grown in an era of high rates and home prices in which they can be made without disrupting an older primary mortgage.

An issue that's arisen in originating e-HELOCs is that they don't have an electronic promissory note like a first-lien mortgage does, said Angel Hernandez, chief strategy officer, Stavvy.

Primary mortgage e-notes have established policy and information technology that are considered reliable standards for digital transfers.

"Absent additional guidance, instead, the transferability of e-HELOCs is governed by an agreement and a portion of the Uniform Commercial Code," Hernandez said.

That agreement requires all participants in the deal to agree on a common framework capable of supporting the creation, transfer and liquidity of the assets. It's a strategy that's actively used but its customized nature limits widespread adoption.

"This underlying regulatory framework, as well as the IT framework, need to be put in place to really have the comfort needed by sponsors and investors so these deals can really create liquidity in the secondary market for e-HELOCs," Hernandez said.

The Uniform Law Commission under the new Article 13 of the Uniform Commercial Code and amended Article 9 hands down to the states the task of establishing digital transferability standards. So the HELOC market may want to watch as a growing number roll out these rules.

"People tend to think of this rule as being about digital assets in terms of things like crypto, but it does come into play with something like a HELOC when it's an electronic instrument too," said Hernandez.

Fannie/Freddie pricing, credit and the FHLBs

In keeping with the theme of policies around trading assets, another area to watch are rules that major government-related buyers of loans in the secondary market set at the direction of their regulator, the Federal Housing Finance Agency.

The agency is taking another look at the way it prices loans, Director Sandra Thompson said at the National Housing Conference's recent Solutions for Affordable Housing meeting, when asked about some of 2023's controversial changes, which she has called misunderstood.

"FHFA is undertaking a pricing review," Thompson said.

Next year the agency also plans to use responses to its request for input on its pricing process, which is largely correlated with the government-sponsored enterprises' regulatory capital framework, to provide more transparency into both.

"We're in the process of formulating those comments and putting together a comprehensive understanding of the support that we receive for the way that the enterprises price loans," Thompson said.

While there may be little chance of the enterprises leaving the government conservatorship next year, recent focos on the capital framework, which is a key step in moving toward that exit, suggests the idea hasn't been abandoned.

Meanwhile, the enterprises' congressionally mandated move toward two updated scores rather than one old one is scheduled to continue alongside the development of a related bi-merged credit report option next year.

But the FHFA has repeatedly said it won't rush changes to any of the credit standards used to "gate" mortgage eligibility because of their far-reaching influence on the system, so watch this area closely for any required steps, possible delays and revisions.

"It's a comprehensive process. We're taking our time. We're getting input and for us, it's more important to get it right and to implement it very quickly," Thompson said.

The debate around Federal Home Loan Banks' rule following the 2023 depository crisis and a recent report reflecting on it is also expected to continue next year.

Some things the FHFA or other regulators are seeking in that realm, such as upsizing the share of funds that flow to an affordable housing program from the system, will not be accessible without statutory authority, Thompson said.

For lenders that rely on the system for liquidity will be keeping an eye on how reform affects their access to it and costs. Thompson has talked about looking beyond the collateral backing advances to the financial profiles of the counterparties involved, potentially linking it to access.

"The good news is, we haven't heard of any situations where banks have not been able to access the system," said Ron Haynie, senior vice president, mortgage finance, Independent Community Bankers of America.

"But we are concerned that could become a problem in the future, because the report was pretty clear that they don't want the Federal Home Loan Bank System to be looked at as a lender of last resort," he added.

Government agencies and servicers

More policy changes aimed at further improving the management of payments, including some designed to offer "meaningful default servicing relief" are another thing to watch for next year, said Hernandez. Some of these measures have been aimed at addressing higher rates, so it will be interesting to see whether they're influenced by the future path of Fed policy.

Such policy changes are important because the lack of rate relief added to distressed borrowers' hardships and it has been tough on Ginnie Mae issuers due to secondary-market pooling restrictions on delinquent loans that the securitization guarantor has. A version of those challenges in the specialized reverse mortgage market also has been an issue and Ginnie's expected to continue to make policy changes aimed at alleviating them.

"Absent additional policy action from FHA, VA, etc. the ability of servicers to extend substantial payment relief for homeowners experiencing a permanent income impairment will be constrained as the modifications need to be performed at market rates to ensure adequate execution upon repooling," Hernandez said.

"The payment supplement partial claim program currently under evaluation at FHA is a perfect example of the type of policy action we could expect to see in 2024 to deal with this issue," he added.

Loss mitigation changes that build on others already established as permanent successors to temporary pandemic innovation will be coming from Ginnie, the Federal Housing Administration and the Department of Veterans Affairs, Hernandez predicts.

Notably, the VA has pledged to deliver a successor to the defunct partial-claim program. That program previously let borrowers with hardships set aside missed payments for later in a second-lien obligation.

Consumer issues that have arisen in the absence of a VA partial claim option since late 2022 recently came to a head and led the department to call on servicers to put foreclosures on hold until it can put a new policy in place. That's likely to be one of the most significant changes to come next year.

Servicers also should look out for the following more restrictive policies.

Ginnie Mae's nonbank risk-based capital rule that is particularly punitive for servicing assets, has been on track to take effect at the very end of 2024. Pending bank capital rules and the CFPB could put pressure on servicing too.

Government agencies like Ginnie, VA and FHA also will likely advance policies related to origination as well as servicing next year.

There will likely be some attempts to revive underutilized programs, such as "enabling more use of down payment assistance for mortgagees that are government entities and additional policy updates on loan assumptions," Hernandez said.