Banking and Finance Law Daily Wrap Up, FINANCIAL STABILITY—Mortgage stability, BSA reporting deadlines concerns of two industry letters to regulators on COVID-19, (Mar. 24, 2020)

Banking and Finance Law Daily Wrap Up

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By Jacob Bielanski

The industry groups expressed concern with a lack of liquidity backstop for non-bank mortgage servicers facing "unprecedented" delinquencies and forbearances from coronavirus, as well the impact of telework mandates on compliance officers' ability to file Bank Secrecy Act (BSA) reports, among others.

Financial industry groups continued dialogue with financial regulators on COVID-19 (coronavirus) outbreak measures, addressing concerns on Bank Secrecy Act (BSA) compliance and mortgage industry changes in letters sent on March 23 and 22, respectively.

Bank Secrecy Act. In one letter, five banking trade groups signed onto a letter to Financial Crime Enforcement Network Director Kenneth Blanco, expressing concerns with the ability of financial institutions to meet BSA filing requirements. The letter specifically noted that efforts to mitigate the virus spread by having employees work from home has meant that teleworking compliance officers lose access to the FinCEN reporting system. The groups said a 90-day extension to BSA reporting, particularly Currency Transaction Reports, was necessary in order to continue following public health recommendations on coronavirus.

"It is important that regulatory agencies continue to work closely with banks and credit unions to assist borrowers," the letter—signed by the Consumer Bankers Association, Credit Union National Association, Independent Community Bankers of America, Mid-Size Bank Coalition of America, and National Association of Federally-Insured Credit Unions—said. The letter was a response to a request by FinCEN for financial institutions to communicate any concern over "potential delays in its ability to file required Bank Secrecy Act (BSA) reports," to the Department (see *Banking and Finance Law Daily*, March 17, 2020).

Mortgages. Meanwhile, a separate letter addressed to heads of the Treasury Department, Federal Housing Finance Administration, Department of Housing and Urban Development, Federal Reserve, and the Consumer Financial Protection Bureau, as well as Special Assistant to the President for Financial Policy, Andrew Olmem, sought to share concerns over how coronavirus response would impact the mortgage industry. In the two-part letter, industry groups discussed both impacts to the mortgage industry overall, including anticipated delay in finalizing new mortgages and modifying terms. The letter noted a number of practical factors, such as securing notarization and appraisal services as "many professionals are subject to mandatory isolation and telework policies."

Mortgage industry groups also sounded an alarm on the "highly concentrated" impact the economic stress of coronavirus will have on low- to moderate-income mortgage holders. Specifically, non-bank mortgage service companies stand vulnerable to the "unprecedented level of delinquencies and payment forbearance that will be required" as part of response to coronavirus, due to a lack of the liquidity available to larger banks, according to the letter. Mortgage industry groups argued the problem is particularly pronounced for loans securitized by Ginnie Mae as opposed to the Government Sponsored Enterprises (GSEs), which include all Federal Housing Administration and Veterans Affairs loans, as "Ginnie Mae does not directly reimburse servicers for the advances made to investors nor does Ginnie Mae step into [sic] make those payments as the delinquencies persist over a protracted period." For FHA and VA loans, non-bank mortgage companies were the "dominant providers," according to the letter.

To combat the lack of liquidity backstop for non-bank mortgage companies, the letter pointed to Ginnie Mae's "Pass-Through Assistance Authority," a program that would allow Ginnie Mae to temporarily make principle and interest advances to bondholders for the servicer, as well as the Federal Reserve's 13(3) authority.

"The critical point is the necessity of a temporary government backstop liquidity source(s) to fund an unprecedented need for servicer advances," the letter—signed by American Bankers Association, Consumer Data Industry Association, Housing Policy Council, Mortgage Bankers Association, Structured Finance Association, The National Mortgage Servicing Association, and US Mortgage Insurers—told regulators. "We do not have a specific operational plan for providing this liquidity, in part because the various programs that could be used have very different parameters and requirements."

Companies: American Bankers Association; Consumer Bankers Association; Consumer Data Industry Association; Credit Union National Association; Fannie Mae; Freddie Mac; Ginnie Mae; Housing Policy Council; Independent Community Bankers of America; Mid-Size Bank Coalition of America Mortgage Bankers Association; National Association of Federally-Insured Credit Unions; The National Mortgage Servicing Association; Structured Finance Association; US Mortgage Insurers

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