

Did Treasury's GSE report move the needle?

By Hannah Lang

Published September 06, 2019, 4:39pm EDT

WASHINGTON — The Trump administration's report on the nation's housing finance system raised the goal posts for ending the conservatorships of Fannie Mae and Freddie Mac, but how officials get there is still highly uncertain.

Like much of the debate around reforming the government-sponsored enterprises, the Treasury Department report — and the reactions to it — revolve around two scenarios: Congress taking up comprehensive legislation, and the administration moving on its own.

The report essentially calls for both. It outlines a preference for lawmakers to create a new government backstop, an explicit guarantee and a marketplace of guarantors to compete with the GSEs. But with legislation still unlikely, much attention has turned to what the administration wants to do on its own. The report says congressional action on an explicit guarantee is not mandatory.



A long-awaited report from the Treasury Department on the reform of Fannie Mae and Freddie Mac presented several options for the Federal Housing Finance Agency to consider as the conservator of the two government-sponsored enterprises.

Bloomberg News

Yet Treasury's focus on parallel avenues has done nothing to satisfy skeptics who believe sustainable reform is not possible without Congress. Many observers believe anything short of legislation to permanently redefine Fannie and Freddie's charters could risk a return to the current status quo.

"If you don't address the charters, you can do a lot of things to enhance the market and try to level the playing field, but at the end of the day, these two guys are operating with charters and statutory provisions that can then be changed over time back towards the un-level playing field that we had, and so that's why

it lacks that permanence,” said Ed DeMarco, the president of the Housing Policy Council and former acting director of the Federal Housing Finance Agency. He added that investors in mortgage securities would ostensibly prefer a full-faith-and-credit government guarantee.

Others disagree and argue that the Treasury report offered real solutions to steer clear of the congressional stalemate. For example, the report recommended that under an administration-driven release of Fannie and Freddie into the private sector, Treasury could maintain stock purchase agreements requiring the GSEs to pay "commitment fees" into a catastrophic backstop fund.

“A backstop is kind of the way it worked 11 years ago, that if they got into trouble, the government would be able to hopefully advance them a line of credit,” said Scott Olson, the executive director of the Community Home Lenders Association. “If Fannie and Freddie are still in this role 10 years from now and there's a problem, I just don't think we're going to stand by and let them stop making loans.”

Some argued that the appeal of the administration undertaking "recapitalization and release" for the GSEs is that a congressionally sanctioned explicit guarantee would still be a subsidy to Fannie, Freddie and other companies potentially competing with them.

That guarantee could even be “an unnecessary gift to these systemically important financial institutions,” said Joshua Rosner, managing director at Graham Fisher & Co.

The next steps following the release of the Treasury report and supplementary recommendations by the Department of Housing and Urban Development are unclear. FHFA Director Mark Calabria, Treasury Secretary Steven Mnuchin and HUD Secretary Ben Carson are set to testify in front of the Senate Banking Committee on the issue Sept. 10, where some industry observers are hoping for more granular details about the administration's plan.

“There was no action plan, no implementation plan, so it's hard to know what does that really mean,” said Laurence Platt, a partner at Mayer Brown, of the Treasury and HUD reports. “Is it just musings or is it really a blueprint for what the administration is going to do unilaterally?”

And while the Trump administration's report set the groundwork for an executive branch rework, several other independent agencies are involved in many of the report's recommendations, said DeMarco.

“One of the key things to watch for is what kind of organized follow-up will there be to these recommendations,” he said. “The recommendations are sound, they talk about again leveling the playing field, bringing in private capital and so forth, but you've got [the Consumer Financial Protection Bureau], FHFA, the Securities and Exchange Commission and all the federal bank regulators all needing to play a part in enacting that vision.”

Yet some believe Calabria could be holding the reins for much of the administration's path forward, and the FHFA is already granted substantial authority to deal with Fannie and Freddie administratively. In opening the door to recap and release, the report may be a signal that the FHFA will move aggressively.

Calabria "and [Treasury] Secretary [Steven] Mnuchin have an enormous administrative range of action, as they make clear here," said David Dworkin, the president and CEO of the National Housing Conference.

But in also promoting legislative solutions, the report continues to send mixed signals about the government's intentions. In January, then acting FHFA Director Joseph Otting promised significant progress on overhauling the housing finance system in the next six to 18 months. However, the report seemed to embrace a more deliberate approach.

“To me, the bigger issue is the credibility of Treasury and FHFA who say that their focus is on doing what the law says and may still drag their feet ... for political considerations rather than the enforcement of law considerations,” said Rosner.

The congressional piece of the proposal was also puzzling to many. While Treasury repeated that it preferred Congress to enact legislation, many of the legislative proposals were ideological, said Platt. Such a package would be impossible to advance in a divided Congress.

“We couldn’t get a bipartisan plan through Congress,” he said. “Are we going to be able to get a more partisan one through?”

Dworkin suggested it would be more reasonable to expect Congress to oversee the administration’s reform of the GSEs instead of leading the way.

“Reinventing an entire mortgage finance system is like having Congress build a nuclear bomb,” he said. “It’s appropriate for Congress to oversee our nuclear program, but it is not reasonable to expect them to actually build it. I think oversight of this process and adjustment of the statute of the current system is in Congress’s sweet spot.”

Nevertheless, leading congressional Democrats slammed the administration’s recommendations on reworking the affordable housing goals, and expressed concern that some of the proposals would have the effect of making mortgages more expensive and disadvantage minority borrowers.

“It is critical that housing finance reform proposals do not diminish opportunities for homeownership, increase housing costs, or make housing less available,” said House Financial Services Committee Chair Maxine Waters, D-Calif., in a statement. “However, Trump’s plan appears to do just that.”

Repealing the affordable housing goals is a non-starter, regardless of how great the rest of the report’s recommendations are, said Dworkin.

“If you try to do that, it really negates all the other value of moving forward, and it’s not going to happen as long as the Democrats are in control, and potentially even if they’re not,” said Dworkin. “The alternative that they’re proposing is a strip of funding from mortgages that would go to HUD for affordable housing construction, and that’s the dumbest idea I’ve ever heard.”

Going forward, FHFA must now decide if it will take up some or all of the administrative recommendations from the report, said DeMarco.

“Mark’s got a lot of work to do but I think that the Treasury report sets forth a very good list of actions that he and his team can examine and determine exactly how they want to go about it,” he said.

Calabria had said he was waiting to see the conclusions of the report before negotiating changes with Treasury to stock purchase agreements, of which Treasury offered several options. The report also recommended several options to move forward with recapitalizing the GSEs — another one of Calabria’s goals.

“I think of this as a roadmap and not a blueprint, because there are a lot of paths they can take, but they pretty clearly signal the ones they like and the ones they’re giving lip service to,” said Dworkin. “I expect them to move forward incrementally on the administrative reforms, so that Congress has time to make adjustments in the statute.”

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