

Legal and Compliance Report—September 2020¹

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Adverse Market Refinance Fee Effective Date Delayed to December 1, 2020

On August 25, 2020, the Federal Housing Financing Agency (the “FHFA”) directed Fannie Mae and Freddie Mac to delay the effective date of the Adverse Market Refinance Fee previously announced until December 1, 2020.² As you may be aware, the Adverse Market Refinance Fee was scheduled to take effect September 1, 2020. In addition to the delay, FHFA announced an exemption for refinance loans below \$125,000 and Home Ready/Home Possible refinances.

On August 12, 2020, Fannie Mae and Freddie Mac announced the imposition of a 50-basis point (.500%) Adverse Market Refinance Fee on refinance loans sold to either Fannie Mae or Freddie Mac.³ According to FHFA, the fee is necessary to cover \$6 billion in projected losses at the GSEs as a result of COVID-19. The fee will apply to the following loans:

- For **Fannie Mae, limited cash-out refinances and cash-out refinances**, except for certain single-family construction-to-permanent loans
- For **Freddie Mac, cash-out and no cash-out refinances**, except for certain construction conversion mortgages

Again, the recent FHFA directive exempts refinance loans with loan balances below \$125,000. Affordable refinance products, Home Ready and Home Possible, are also exempt.

Lenders and consumers alike would have suffered negative consequences from the fee and its original September 1, 2020, effective date. Now, the extension of the effective date should allow lenders to honor rate locks and close loans in their pipelines without being forced to absorb the unanticipated

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² See FHFA News Release (August 25, 2020) at <https://www.fhfa.gov/Media/PublicAffairs/Pages/Adverse-Market-Refinance-Fee-Implementation-Now-December-1.aspx> (last reviewed September 1, 2020).

³ See Fannie Mae Lender Letter 2020-12, available at <https://singlefamily.fanniemae.com/news-events/lender-letter-ll-2020-12-new-adverse-market-refinance-fee> (last reviewed September 1, 2020); Freddie Mac Bulletin 2020-32, available at <https://sf.freddie.com/articles/news/guide-bulletin-2020-32-adverse-market-refinance-fee> (last reviewed September 1, 2020).

fee. In addition, the exemptions in the FHFA announcement should help minimize the impact of this fee on borrowers with lower income levels.

Links to the August 25, 2020, FHFA Press release and the original Fannie Mae and Freddie Mac Announcements are included below. Lenders should review these announcements closely in anticipation of the December 1, 2020 effective date.

- FHFA News Release (August 25, 2020), *available at* <https://www.fhfa.gov/Media/PublicAffairs/Pages/Adverse-Market-Refinance-Fee-Implementation-Now-December-1.aspx> (last reviewed September 1, 2020).
- Fannie Mae Lender Letter 2020-12, *available at* <https://singlefamily.fanniemae.com/news-events/lender-letter-11-2020-12-new-adverse-market-refinance-fee> (last reviewed September 1, 2020);
- Freddie Mac Bulletin 2020-32, *available at* <https://sf.freddie.mac.com/articles/news/guide-bulletin-2020-32-adverse-market-refinance-fee> (last reviewed September 1, 2020).