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Regulation Division
Office of the General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW., Room 10276
Washington, DC 20410–0001

Re: Docket No. FR–5353–N–02; RIN 2502–AI79; Federal Housing Administration (FHA): Strengthening the Home Equity Conversion Mortgage Program

Introduction

National Reverse Mortgage Lenders Association ("NRMLA") is the national voice of the reverse mortgage industry. With over 300 member companies, and over 2,000 member delegates, NRMLA serves as an educational resource, policy advocate and public affairs center for lenders and related professionals. NRMLA was established in 1997 to enhance the professionalism of the reverse mortgage industry. Our mission includes educating industry participants on best practices, regulatory requirements and market dynamics; providing helpful information to consumers about reverse mortgages, enforcing our Code of Ethics and Professional Responsibility,[1] and offering insight to policymakers working on reverse mortgage matters and related issues.

Overview

On May 19, 2016, the Office of the Assistant Secretary for Housing - Federal Housing Commissioner, HUD published a proposed rule in the Federal Register (81 Fed. Regis. 31770) requesting public comment on its proposal to codify several significant changes to FHA's Home Equity Conversion Mortgage program that were previously issued under the authority granted to HUD in the Housing and Economic Recovery Act of 2008 and the Reverse Mortgage Stabilization Act of 2013 (or RMSA), and to make additional regulatory changes (the "Proposed Rule"). HECM program changes were made in 2013 pursuant to the RMSA, and other changes had been made to the program prior to 2013 (primarily under the Housing and Economic Recovery Act of 2008, or the HERA) in order to improve the stability of the HECM program.

On August 11, 2016, the FHA opened the public comment period solely to address a suggested change offered during the public comment period for the proposed rule regarding the lender's option to file a claim when the loan balance reaches 98 percent of the maximum claim amount (hereinafter, "Supplemental Proposal"). Comments on this one additional item are due September 12, 2016. *See* 81 Fed. Regis. 53095 (Aug. 11, 2016).

Introduction and Overview

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[1] http://www.nrmlaonline.org/nrmla/ethics/conduct.aspx

Section 206.107(a) of the HECM regulations gives the mortgagee an option, before the mortgage is submitted for insurance endorsement, to select either: (1) The assignment option, which allows the mortgagee to assign the HECM to the Secretary if the mortgage balance is equal to or greater than 98 percent of the maximum claim amount; or (2) the shared premium option, which allows the mortgagee to retain a portion of the monthly mortgage insurance premiums (MIP) but does not allow the mortgagee to assign the mortgage unless the mortgagee fails to make payments and the Secretary demands assignment. Under the assignment option, the mortgagee may only assign the mortgage to the Secretary if the following are also true: (1) The mortgagee is current in making the required payments to the mortgagor; (2) the mortgagee is current in making the required MIP payments to the Secretary; (3) the mortgage is not due and payable; and (4) the mortgage is a first lien of record and title to the property securing the mortgage is good and marketable.

Out of the eighty-seven (87) comments we understand HUD received on its May 19, 2016 Proposed Rule, one single and sole commentator suggested to HUD a possible change to HUD's HECM program policy that grants the mortgagee the option to assign a HECM loan to FHA if the outstanding loan balance is equal to or greater than 98 percent of the maximum claim amount (or MCA). The commentator stated that, in some cases, a mortgagee may decline to file a claim in this scenario if the property value has risen rapidly and the loan has an above-market rate. The commentator concluded that lenders in this way have a "put option" and "can choose to keep the best loans and make claims for the worst ones." In order to address this issue, the commentator suggested that HUD require that an assignment claim be made when the loans reach 98 percent of the maximum claim amount. HUD seeks public comment on the feasibility of this proposal as HUD is considering whether to adopt it. No one else raised this issue, this matter was not part of the RMSA or HERA, and as far as we know, HUD also was not considering this item for possible review or change.

In its August 11, 2016 Federal Register publication, in its Supplemental Proposal, HUD solicited public comment solely on the issue of requiring mortgagees to file a claim when the HECM loan reaches 98 percent of the maximum claim amount. HUD stated therein that if it were to implement this proposal, HUD would amend § 206.107(a) to require the mortgagee to assign the mortgage to the Commissioner if the mortgage balance is equal to or greater than 98 percent of the maximum claim amount, or the mortgagor has requested a payment which exceeds the difference between the maximum claim amount and the mortgage balance.

For the reasons detailed below, NRMLA and its members strongly oppose this suggested change and implore HUD not adopt it.

Detailed Discussion and Comments

As stated above, NRMLA and its members strongly oppose the suggested change in the Supplemental Proposal. Based on a survey of its members, NRMLA understands that most, if not all, originating mortgagees have chosen in the past, and continue to choose, the assignment option under section 206.107(a), and not the shared premium option specified and allowed thereunder. Further, based on our understanding and input from our members, we understand that most, if not all, servicers strongly endeavor to assign HECM loans when the MCA thereon reaches 98%. The reason for this is, in substantial part, for HECM loans that have been pooled into Ginnie Mae HMBS securities, Ginnie Mae guidelines provide for an issuer to buy out HECM loans (and its related participations) from Ginnie Mae pools when a HECM loan reaches 98% of the MCA. These HMBS related repurchases impose intensive

capital requirements upon such issuer-mortgagees. Thus, when such HECM loans are repurchased, servicers look to assign them to HUD as soon as possible, and not wait.

Thus, NRMLA and its members do not view the purely theoretical "put option" strategy as described by the one sole commentator as providing a compelling or, frankly, any substantial justification for proposing or making such a fundamental change to the HECM program—which change, if made, would have unintended and far reaching punitive consequences for industry participants and for the HECM program, and for the seniors it and HUD serve.

Below we outline some of those consequences. In this regard, again, NRMLA and its members strongly oppose this suggested change as further proposed by HUD on August 11, 2016. However, if for some reason HUD nevertheless concludes that it must continue down this path, we strongly urge it to do three things: (i) gather data to determine if such a "put option" strategy is being pursued by any or some mortgages with any degree of prevalence,: (ii) confer and consult closely with Ginnie Mae on its HMBS program and consider, with Ginnie Mae, how such FHA changes to the HECM program might affect the Ginnie Mae HMBS program, Ginnie Mae HMBS issuers, and thus, ultimately, Ginnie Mae and HUD; and (iii) undertake further consideration of and address the consequences and questions outlined immediately below.

"Assignable Window"

HUD should consider that some HECM loans are not assignable when the loan balance reaches 98% of the MCA because the loan may be in due and payable status due to the borrower's death or a default under the loan (such as a tax and/or insurance (or T&I) default). HUD should consider, in these instances, whether the servicer must nonetheless assign the loan to HUD when the loan balance reaches 98% of the MCA. If the servicer, as today, cannot assign a due and payable loan to HUD when the loan balance reaches 98% of the MCA, the HUD should consider defining an "assignable window" within which the servicer permissibly may assign a HECM loan to HUD once a HECM becomes assignable. And, HUD should consider if there would be a point at which the servicer would not be able to assign such a loan, and thus would have to continue to carry it on its books for a further elongated period of time.

As also described below, these scenarios could become financially acute for servicers where HECM loans are in T&I default, but near the 98% MCA metric, and the servicer is working on or chooses to offer loss mitigation options.

Clarify – Cured Loans over 100% MCA Still Assignable

Related to the "assignable window" issue described above, HUD should clarify that if HECM loans will not be assignable if such loans are in due and payable status, then servicers should be able to assign such loans after the loan is cured (if curable) even if the loan balance has exceeded 100% of the MCA, and be entitled to and be paid the full amount due with respect to such insurance claims.

Consider that HUD Makes Advances on Draw Based Assignable Loans Near but Below 98% MCA

HUD should consider, in those scenarios wherein a borrower requested draw will cause the loan balance to exceed 98% of the MCA, whether a servicer can assign that loan to HUD prior to making the advance. If not, and the advance takes the loan balance over 100% of the MCA, HUD should clarify whether, in those instances, it will pay more than 100% of the MCA.

Will HUD Want and Take Assignment of Loans where Home Being Sold?

HUD should consider those instances where a home will be sold or has been listed for sale, but the loan balance is reaching 98% of the MCA. In these instances, HUD should consider whether the servicer can and should assign the loan to HUD at 98% MCA while such sale is pending. If not, and the sale for some reason does not consummate or falls through, as outlined above in other instances, HUD should clarify whether the servicer permissibly may assign the loan with a loan balance in excess of 100%.

Other Comments/ Estimated Costs of Implementing the Supplemental Proposal

Servicers already face economic challenges when dealing with HECM loans repurchased out of HMBS pools that are not immediately assignable to FHA. If the Supplemental Proposal is finalized in its current form, those costs will be hugely increased.

In this regard, NRMLA servicer members developed the following potential HECM servicer loss scenarios if the Supplemental Proposal were adopted as currently drafted based on actual loans in their servicing files. They describe HECM loans not eligible for assignment to HUD when the UPB on such loans originally reached 98% of MCA because the loans were in default at that time. For these three loans alone, which were randomly selected, losses to the servicer add up to approximately $20,000.

UPB	MCA	UPB % MCA	Loss Amount
$134,452	$125,000	108%	($9,452)
$212,208	$204,000	104%	($8,208)
$101,334	$100,000	101%	($1,334)

We are informed by our members that there are an enormous number of loans that are in this position, but then later cure. If servicers are forced to then assign HECM loans such as these at a later date at the time of cure, but are limited to the MCA with respect to their FHA claim, the table above illustrates the potentially catastrophic losses that servicers would incur.

Further, in those instances wherein a HECM borrower is in T&I default, given the potential losses outlined above, the Supplemental Proposal may create a disincentive for servicers to offer loss mitigation to such HECM borrowers, if and when such loans, while still "uncured," cannot be assigned to HUD, but while the UPB grows beyond 98% or 100% MCA. In these instances, an economically rational but consumer-unfriendly approach might be to liquidate such loans sooner avoid the "carrying cost" on the servicer's or investor's balance sheet. We believe that this potential creates a perverse, but draconian, choice at odds with the policies outlined in HUD's recent Mortgagees Letters 2015-10 and 2015-11.

In addition, Ginnie Mae HMBS Issuers publish in their investment and securities documents, and in loan purchase and sale and warehouse agreements, the manner in which they deal with and service FHA-insured loans including references to the currently permitted assignment option. To the extent the Supplemental Proposal changes it, or even dis-enhances or dilutes FHA insurance coverage, or even if merely based on perception, such a change, perceived or otherwise, could provide legal and contractual exposure to servicers and in any event would require considerable document and disclosure revision.

Finally, experience repeatedly has demonstrated that unless and until all aspects and ramifications and requirements of HUD's Supplementary Proposal (as noted above) are both addressed and fully and unambiguously described by HUD in a final rule, servicers and others that even, arguably, fail to meet them will be exposed to administrative penalties from HUD (and possible action by others).

Conclusion

NRMLA appreciates your consideration our comments herein. We trust that you will find our comments above helpful and that you will view and act upon them with favor.

Very truly yours,

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