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National Reverse Mortgage Lenders Association

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Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW.
Washington, DC 20552

Re: Bureau of Consumer Financial Protection, Docket No. CFPB–2017–0010; RIN 3170–AA64

Introduction

The 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 April 25, 2017, the Bureau proposed additional amendments and clarifications to the final HMDA Rule (or 2015 Final HMDA Rule)[2] which it finalized in 2015 (herein, the 2017 proposal referred to as the 2017 HMDA Proposal).[3] The Bureau requested comments on the 2017 HMDA Proposal by or before May 25, 2017. Please find our comments below.

Comments

Reporting Loans Purchased

Under section 4(a)(3), the purpose of loans purchased that are originated before January 1, 2018 may be reported as "not applicable", for instance, if the cash-out refinancing loan purpose is unknown, and still comply with the rule.

We request that this standard of reporting the "not applicable" designation for such loans originated prior to January 1, 2018 but purchased after that date, be expanded to include other data fields, such as the collateral type of the loan when the loan is secured by a manufactured

[1] *Code of Ethics & Professional Responsibility*, NRMLA, http://www.nrmlaonline.org/nrmla/ethics/conduct.aspx.
[2] 80 Fed. Reg. 66128 (Oct. 28, 2015).
[3] 82 Fed. Regis. 19142 (Apr. 25, 2017).

home property type as specified under section 4(a) (29) and manufactured home land property type under section 4(a)(30).

Reporting Borrower's Income

Section 4(a)(10)(iii) requires lenders to report the income level of an applicant or borrower, using the gross annual income that the lender relied on when making the credit decision or, if a credit decision was not made, the gross annual income relied on in processing the application. The revisions under the 2017 HMDA Proposal would clarify that gross annual income does not include factors that an institution relies on in addition to income, such as amounts derived from underwriting calculations of the potential annuitization or depletion of an applicant's remaining assets. Gross annual income would include actual distributions from retirement accounts or other assets that are relied on by the financial institution as income.

We request that reverse mortgages be exempt from the income-reporting requirement, similar to the rate spread, HOEPA status, origination charges, discount points, lender credits, total loan costs and points and fees, prepayment penalty term, and balloon payment exemptions. Should the Bureau determine income reporting is to be required on reverse mortgage loans, below we have outlined numerous areas that will require further guidance and clarification.

We read the 2015 Final HMDA Rule to create two different standards for "relied on" – one for income and another for Property Value/Credit Score/CLTV/DTI data fields. The "relied on" concept in Property Value data and Credit Score field expressly permits the reporting of "not applicable" when application is withdrawn, closed for incompleteness, or denied when the property value was not relied on in the credit decision (factor in the credit decision even if it was not a dispositive factor).

We request further clarification on the meaning of "income relied upon to make the credit decision" as it relates to reverse mortgages. For example, if estimated monthly income was provided verbally and verified, but the loan was denied due to ineligible property type, then under the rule, a financial institution must report the income "relied on in processing the application". In that scenario income was verified, but it was not relied upon to make the denial decision. In this case, we request that an option be granted to report "not applicable" when an application withdrawn, the file closed for incompleteness, and a denial based on collateral reasons or any other reason in which the income was not relied upon.

Unlike the Property Value/Credit Score/CLTV/DTI data fields (which are the other data fields with the "relied on" standard under the 2015 HMDA Rule), financial institutions must nevertheless continue to report whatever income information it was relying on in the processing of the application. We request clarification that "relying on" truly means "any the income information provided by the applicant and adjustment made by institution via its policies and procedures", as stated in the 2017 HMDA Proposal, when an application is withdrawn, closed for incompleteness or denied, even if such denial is based on collateral reasons or any other reason in which the income was not relied upon.

FHA-insured HECMs make up over 99% of the reverse mortgage market today, and have never been less than 85% of the market since 1993. Further, we understand that the few lenders that offer non-FHA-insured loans today follow and require FHA HECM-like financial assessment with such loans due to efficiency of operations purposes. If such lenders did not do so with non-FHA-insured loans, but a prospective borrower changed his or her product election and chose an FHA-insured HECM in the midst

of an origination of a reverse mortgage, the lender would have to turn down the prospective borrower and start over with that applicant. That would be both inefficient and not customer-friendly.

For the income reporting requirement under § 1003.4(a)(10)(iii), we request written clarification that a financial institution for a reverse mortgage may report "effective income" obtained in the "residual income" analysis as the annual gross income consistent with the financial institution's policies and procedures, which may provide for inclusion of: (1) certain non-applicant's income, such as that from an eligible non-borrowing spouse or other non-borrowing household member; and (2) imputed income from asset dissipation, and comply with the income reporting requirement under § 1003.4(a)(10)(iii).

Pursuant to FHA Mortgagee Letter 2016-10 and its HECM Financial Assessment and Property Charge Guide, a financial institution originating a reverse mortgage must perform a cash flow/residual income analysis to determine the capacity of the mortgagor to meet his or her documented financial obligations with his or her documented income. Income from any, or all, of the sources permitted by FHA must be calculated and documented for all mortgagors to the extent necessary to determine that the mortgagor has residual income equal to, or exceeding, the required amount based on geographic region and family size. FHA establishes the permissible residual income tables. Effective income refers to income that may be used in the calculation of residual income. Effective income must be reasonably likely to continue through at least the first three years of the mortgage. The mortgagee must document the mortgagor's income, verify the accuracy of the amounts of income being reported, and determine if the income can be considered as effective income in accordance with the FHA requirements. An eligible non-borrowing spouse may voluntarily provide information on his or her income, and mortgagees may use the residual income of the eligible non-borrowing spouse in one of two ways: as a compensating factor or to reduce the family size by one. Another non-borrowing household member may voluntarily provide information on his or her income, and mortgagees may use the residual income of the other non-borrowing household member to reduce the family size by one. An eligible non-borrowing spouse or non-applicant, household member's income must meet the same documentation and verification standards as required for the mortgagor's income, except income from dissipated assets may not be included. Financial institutions may estimate imputed income from dissipation of liquid assets (e.g., certificates of deposit, Roth IRAs, etc., defined as assets that can be converted to cash within one-year without payment of an IRS penalty, using the applicable discount provided in the FHA guidelines. The mortgagor's residual income is calculated by summing the total monthly income from all permissible sources for the mortgagors obligated on the mortgage, and subtracting from that amount the total monthly expenses from all sources for the mortgagors obligated on the mortgage. Residual income must equal or exceed the income required for the applicable family size for the geographic area in which the property is located. For convenience, please find attached the referenced HECM Financial Assessment and Property Charge Guide.

Reverse mortgage underwriting guidelines permit the inclusion of (1) non-applicant's income; and (2) imputed income from asset dissipation, in the income analysis, pursuant to FHA Mortgagee Letter 2016-10 and its HECM Financial Assessment and Property Charge Guide. Paragraphs 1, 2 and 4 of (a)(10)(iii). "1. Income data—income relied on.", "2. Income data—co-applicant." "4. Income data—assets" inadvertently would require financial institutions to calculate HMDA reportable income for reverse mortgages derived only from the applicant and co-applicant income, as well as to the exclusion of asset dissipation income, inconsistent with FHA guidelines. Compliance with the current proposed HMDA rule would require reverse mortgage lenders to calculate, record, and report a different income amount for purposes of HMDA reporting compared to the income relied on in making the credit decision.

Given that the income analysis for a reverse mortgage is different from that of a forward mortgage, we request written clarification that a financial institution for a reverse mortgage may report "effective income" obtained in the "residual income" analysis as the annual gross income consistent with the financial institution's policies and procedures, and comply with the income reporting requirement under § 1003.4(a)(10)(iii).

In light of these considerations, we respectfully request that the Bureau provide and allow that income is not reportable for reverse mortgages.

CLTV

Except for purchased loans, a lender is required to report the ratio of the total amount of debt secured by the property to the value of the property relied on in making the credit decision. A new comment would be added at 4(a)(24) to provide additional guidance. An addition under the 2017 HMDA Proposal would clarify that even if the combined loan-to-value ratio is not dispositive in the underwriting decision but was a factor that was taken into consideration, CLTV should be reported. Another clarification would explain that the rule does not require a specific property be used when calculating the loan-to-value ratio, and a lender could report a property even if that property is not the property that would secure the loan (it could include any property, real or non-real). At the same time, the revisions would explain that the rule does not require a specific valuation method be used.

Reverse mortgages do not have a CLTV guideline required to make the credit decision; therefore, reverse mortgage lenders are not calculating a CLTV ratio. Reverse mortgage guidelines prohibit the creation of a new subordinate lien in connection with a HECM transaction and require prior liens generally to be paid off. Only certain liens may be subordinated (e.g., limited tax deferral program liens, federal, state and local court judgment liens in a payment plan, disaster relief lien that requires flood insurance above a certain amount). We request clarification that: (1) the total amount of debt secured by the property securing a reverse mortgage is limited to mortgage loan liens only (e.g., forward mortgage plus a HELOC); and (2) reverse mortgages are exempt from this CLTV report requirement given there is no CLTV requirement to make a credit decision.

Reporting Introductory Rate Periods

Under the 2015 Final HMDA Rule, section 4(a)(26) requires a lender to report the term in months of any introductory period after which the rate on the loan might change. A proposed clarification in the 2015 HMDA Proposal would explain how lenders are to report loans when the introductory period is not calculated in months. The lender would report the initial period by converting it to whole months, ignoring any remainder. If the introductory period is less than one whole month, the lender would report one month.

Variable rate reverse mortgages are based upon an index, typically one month or one year LIBOR, with a margin added to that index. The rate then changes one approximately one month or one year after closing, and there are no promotional rates, interest rates at closing that are less than the fully-indexed rate, step-rate loans, or ARM loans with an introductory rate that is fixed for the first year, three years or five years, and then adjusting every one year (or other period) thereafter.

The HMDA rule expands the definition of introductory rate period beyond the definition of a similar concept under Regulation Z. Under Regulation Z, introductory rate definition under 12 CFR 1026.6 for

open-end loans and 1026.18 for closed end loans, which defines "introductory rate" as (1) a promotional rate offered in connection with the opening of an account or fixed rate, (2) an interest rate at closing which is less than the fully-indexed rate, (3) step-rate loan in which the rate lasts for 10 years and adjusts every year thereafter for the next 5 years, and then adjusts every three years for the next 15 years, then the introductory period is 120 months; (4) an ARM with an introductory rate that is fixed for the first 5 years and then adjusts every 3 years thereafter, then the introductory rate is 60. HMDA would require all adjustable rate reverse mortgages to report the time period from origination to the rate reset.

Because reverse mortgages do not carry these alternative or adjustable rate features, we request that reverse mortgages be exempt from the introductory rate period reporting requirement, similar to the rate spread, HOEPA status, origination charges, discount points, lender credits, total loan costs and points and fees, prepayment penalty term, and balloon payment.

Expanded Ethnicity and Race

Under Appendix B to Part 1003, paragraphs 8, 9(i), and 9(ii), an applicant or borrower may provide "disaggregated" race and ethnicity. The revisions under the 2017 HMDA Proposal would update the instructions for reporting the disaggregated information to provide that an applicant or borrower may select a subcategory without selecting the main category and the lender would then report the information as provided by the applicant or borrower. Similarly, a borrower or applicant might provide a subcategory without selecting "Other." A lender would not report a main category of "other" if it was not selected by the applicant or borrower. A lender may report up to five subcategories, as selected by an applicant or borrower. The instructions would be amended to clarify how to report. As revised, a lender would report all the aggregate categories selected by the applicant or borrower, up to five.

We request confirmation that: (1) if an applicant completes the free form "other" box, but misspells the "other" race, ethnic or principal tribe, the lender may either correct the misspelling or report the misspelling "other" classification provided by the applicant; and (2) if an applicant does not select the "other" box, but does write in a free form "other", that will count toward the five (5) total categories reported. If an applicant checks the "other" box and includes a free form "other", then that is considered one (1) race option reported. If an applicant does not check the box, but provides a free form "other", we request that this be deemed to meet the up to five (5) reportable options.

Privacy Concerns

In the proposal that lead to the 2015 Final HMDA Rule, the Bureau set forth the approach it proposed to take to protect applicant and borrower privacy in light of HMDA's purposes. It proposed the use of a balancing test to determine whether and how HMDA data should be modified prior to its disclosure to the public in order to protect applicant and borrower privacy while also fulfilling the disclosure purposes of the statute. Nonetheless, as part of the 2015 Final HMDA Rule the Bureau adopted the balancing test described in the proposal that lead to the 2015 Final HMDA Rule. The Bureau stated that it would provide at a later date a process for the public to provide input on the application of the balancing test to determine the HMDA data to be publicly disclosed.

At the time of adopting the 2015 Final HMDA Rule, the Bureau stated that it believed that it will be most helpful in applying the balancing test to provide an additional process through which all stakeholders can provide additional comment now that the data to be compiled and reported have been finalized.

Accordingly, the Bureau stated it intended to provide a process for the public to provide input on the application of the balancing test to determine the HMDA data to be publicly disclosed.

However, the Bureau proposes additional information gathering and clarifications as part of the 2017 HMDA Proposal, and, respectfully, in our view, has still not met the standard it set out for itself almost two years ago in the 2015 Final HMDA Rule to provide a process for the public to provide meaningful input on the application of the balancing test to determine the HMDA data to be publicly disclosed.

In today's environment, where there appears to be a reported data breach almost every day in both the public and private sector, we are very concerned that the Bureau has not initiated a public rulemaking to address the significant consumer privacy dangers and data protection threats that the expanded HMDA data collection poses. As outlined below, for this, and other reasons, the Bureau should extend the timeline for the implementation and mandatory compliance with the 2015 HMDA Final Rule, and any finalization of the 2017 HMDA Proposal.

Additional Time to Obtain Clarifications

When the Bureau finalized the 2015 HMDA Final Rule, it significantly expanded the HMDA data requirements, adding 25 new data categories to the existing 23, multiplying the data that must be collected, verified, and reported each year. Within the data points there are sub-elements and categories that exponentially expand that actual number of data fields to be collected by lenders to over 100 new data fields when sub-elements are included.

However, despite this addition of a multitude of new data points, we find that there has been little if any discussion or consideration of the benefits, challenges, or costs associated with collecting, reporting, and protecting the information.

Regarding the data fields that relate to reverse mortgages, there is a need to implement policies, systems, and technology solutions not only internally, but by and with vendors that support financial institutions offering reverse mortgages, as well as aligning loan origination systems and HMDA compliance vendors. We note that there are very few reverse mortgage vendors, which makes it more difficult to find and implement alternatives in implementing the revised HMDA requirements. Our members report that collecting, verifying, and reporting the expanded HMDA data will significantly increase costs. However, the Bureau admitted in its Regulatory Flexibility Analysis to the 2015 Final HMDA Rule that the benefits of the new HMDA rule are presumed and not demonstrated.[4]

We also note that the this new HMDA rule should be subject to Executive Order 13772, "The Core Principles for Regulating the United States Financial System." Our review indicates that the new HMDA rule fails to meet this Executive Order in many respects. In any event, the Bureau should confer with the Treasury Department to further review the revised HMDA rule to assure it meets with the principles as outlined under Executive Order 13772.

Further, our members have reported submitting HMDA-related questions to the Bureau through the email address at CFPB_RegInquiries@consumerfinance.gov and either have not received responses, or the responses were not timely, but when responses were provided, they were provided by a phone call reply to the email, and not by reply email. Respectfully, until the Bureau can start to provide written responses

[4] 80 Fed. Reg. 66128, 66262 (Oct. 28, 2015).

to all of the myriad of questions that industry has about the new HMDA rule, it should defer the rule and delay the requirement for compliance with the rule.

For the above reasons, the effective date of the 2015 HMDA Final Rule, scheduled for January 1, 2018, should be suspended until the requests for clarification, responses to industry comments, and information security and privacy concerns are fully addressed.

Conclusion

NRMLA appreciates your consideration of 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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