National Reverse Mortgage Lenders Association
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August 4, 2020

http://www.regulations.gov

Comment Intake—LIBOR
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552
2020-LIBOR-NPRM@cfpb.gov

Re: Docket No. CFPB-2020-0014; RIN 3170-AB0: Facilitating the LIBOR Transition (Regulation Z)

The National Reverse Mortgage Lenders Association ("NRMLA") is the national voice of the reverse mortgage industry, serving 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 business. 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 Conduct and Professional Responsibility[1] and offering insight to policymakers working on reverse mortgage matters and related issues.

Introduction

Herein, NRMLA comments on the Bureau's proposed amendments to Regulation Z, 12 CFR part 1026, which implements the Truth-in-Lending Act ("TILA"). NRMLA applauds the Bureau's efforts to proactively address the sunset of LIBOR, and the complex issues facing creditors and consumers in connection with implementing a replacement index.

In the context of reverse mortgages, this issue is most germane to adjustable rate FHA-insured Home Equity Conversion Mortgages ("HECMs") structured as open-end credit. The U.S. Department of Housing and Urban Development ("HUD") administers the HECM program and most adjustable rate HECMs are securitized through Ginnie Mae's HMBS program. As of September 30, 2019, there were 267,487 active HECM Libor-indexed adjustable rate mortgages. From October 1, 2018 through September 30, 2019, 29,367 loans (93.9%) of new endorsements were adjustable rate, LIBOR-indexed reverse mortgages.[2]

As provided in the model HECM Adjustable Rate Note, if an index is no longer available, the lender must use a new index prescribed by the Secretary of HUD.[3] Consequently, lenders who originate variable-rate HECMs are heavily dependent on HUD for providing an approved replacement index, as well as any other necessary revisions to the HECM loan documents. As a result, it is essential that the Bureau coordinate with both HUD and Ginnie Mae prior to finalizing the proposed rulemaking to ensure the replacement index prescribed by HUD will fully comply with the final rules promulgated by the Bureau. Furthermore, it is also essential that the Bureau coordinate with both HUD and Ginnie Mae with respect to the lookback date (discussed further below); for example, if HUD decides to switch the HECM index to SOFR as of January 1, 2021, then lenders would have to comply with that in order to make FHA-insured HECM loans. However, as the proposed rule is drafted, it is not clear to us how such a required

[1] http://www.nrmlaonline.org/nrmla/ethics/conduct.aspx.
[2] https://reversemortgagedaily.com/2019/11/19/hud-reverse-mortgage-program-ups-and-downs-in-2019/.
[3] *See* Model Adjustable Rate Note Form (Home Equity Conversion); https://www.hud.gov/sites/documents/HECM_MODEL_ARM_NOTE.PDF.

change prior to March 15, 2021 would work. Close coordination with HUD and Ginnie Mae in finalizing the proposed rule will, in our view, reduce the risk of such confusion.

Additionally, prior to finalizing the proposed rule, we urge the Bureau to coordinate with the Alternative Reference Rates Committee ("ARRC") with respect to drafting and promulgating index replacement language for use in home equity line of credit ("HELOC") documents, both forward and reverse. ARRC has already provided such language for use in other kinds of mortgage products on a going-forward basis (such as adjustable-rate mortgages), which will allow lenders on a going-forward basis to make the necessary adjustments as they move to new indices.[4]

We further recommend that the Bureau include language in the final rule clarifying when LIBOR is deemed to be "no longer available." As the Bureau likely is aware, contracts for certain non-HECM, proprietary products allow for a change in index when the current index is no longer available. We request that, if lenders need to determine that "no longer available" in this context means that the index in question is no longer widely used or supported in the industry at large (or is becoming less available as time goes on) as opposed to being absolutely unavailable (since it is likely that it will take some time before LIBOR disappears completely), and that if lenders make this assessment in good faith and switch the index accordingly, the Bureau will not subject them to sanctions or other punitive measures.

We also respectfully request that, whatever form the final rule takes, the Bureau recognize that transitioning away from LIBOR will take time and effort, as lenders will have to make potentially substantial adjustments to their loan origination systems, etc., and that the Bureau accommodate that process by giving the industry as much time as the Bureau can before implementing final requirements.

Proposed § 1026.40(f)(3)(ii)(B)

To reduce uncertainty with respect to selecting a replacement index that meets the standards in proposed § 1026.40(f)(3)(ii)(B), the Bureau is proposing to determine that certain spread-adjusted indices based on the Secured Overnight Financing Rate ("SOFR") recommended by ARRC have historical fluctuations that are substantially similar to those of certain USD LIBOR indices. We propose the Bureau, similar to its treatment of ARRC's SOFR index, also expressly determine that the index prescribed by the HUD Secretary for replacement of the LIBOR index, if different from the SOFR, be deemed to have historical fluctuations substantially similar to LIBOR. Since creditors have no choice in choosing a replacement index for HECMs, the Bureau should expressly recognize the choice prescribed by HUD is deemed to meet the standards in proposed § 1026.40(f)(3)(ii)(B).

We also note that proposed § 1026.40(f)(3)(ii)(B) would require a creditor to use the index values of the replacement index and the LIBOR index on a single day (December 31, 2020) to compare the rates to determine if they are "substantially similar." The use of a single day to compare the rates of LIBOR and its replacement could be problematic if such date happens to occur during a period of extreme volatility.
For example, during the current COVID pandemic, the LIBOR rose even though the Federal Reserve and the Bank of England reduced their interest rates. Outflows from money market funds were a key driver of frictions in markets underpinning LIBOR, leading to the rise in LIBOR rates amid poor liquidity.[5]

As a result, we propose that use of the historical spread is more appropriate rather than the spread on a specific day in comparing rates to help ensure such rates are "substantially similar" to each other. In that vein, use of a historical median or average of the spread between the replacement index and LIBOR over the time period the historical data is available, or 5 years, whichever is shorter, should be used for purposes of determining whether a rate using the replacement index is "substantially similar" to the rate using the LIBOR index.

Additionally, we suggest that the use of a specific day, as opposed to a historical spread, makes less sense the farther away we get from December 31, 2020. For example, if a creditor switches away from LIBOR on October 31, 2021, that would be almost a year past the proposed lookback date of December 31, 2020, and in our view it would make little sense at that point to have to look back to that specific date.

[4] *See* https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/ARM_Fallback_Language.pdf.
[5] *See* Reuters, May 7, 2020, "Pandemic market volatility reinforces need to scrap Libor: BOE".

Proposed Revisions to Comments

The Bureau is proposing several technical edits to comments 9(c)(2)(iv)-2 and 59(d)-2 to replace LIBOR references with references to a SOFR index. As discussed above, and for the reasons stated, we propose that such technical edits, in addition to referencing the SOFR index, also expressly reference any replacement index for LIBOR prescribed by the Secretary of HUD for the HECM program as "substantially similar."

Communication with Consumers

Finally, NRMLA would like to encourage the CFPB to clearly communicate to consumers regarding the LIBOR transition, that it is a market and not consumer/lender driven change, and how it is likely to affect them. In NRMLA's view, having the CFPB speak authoritatively on this issue to consumers will greatly reduce the potential for confusion, which may occur if the CFPB leaves such education up to a variety of private lenders.

Conclusion

We trust that you will appreciate how important it is to the reverse mortgage industry that the Bureau coordinate with HUD and Ginnie Mae to ensure that the replacement index prescribed by HUD for the HECM program will comply with the final regulations promulgated by Bureau. In this regard, we encourage the Bureau, HUD and Ginnie Mae to conduct statistical analyses to determine what the effect of such a replacement index will be on, for example, existing pools of securitized HECMs to ensure that such replacement index is truly "substantially similar." Additionally, we urge your favorable consideration of our additional specific comments with respect to the proposed rulemaking.

Very truly yours,

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