National Reverse Mortgage Lenders Association
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[www.reginfo.gov/public/do/Start]
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QDAM
Department of Housing and Urban Development
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Re: Docket No. FR–7034–N–05; OMB Control No. 2502-0524; 30-Day Notice of Proposed Information Collection: Home Equity Conversion Mortgage (HECM) Insurance Application for the Origination of Reverse Mortgages and Related Documents

Introduction

The National Reverse Mortgage Lenders Association ("NRMLA") is the national voice of the reverse mortgage industry. With over 300 member companies and over 2,300 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. NRMLA members make over 90% of the reverse mortgages originated today

Overview

On January 25, 2021, the Office of the Chief Information Officer, Department of Housing and Urban Development ("HUD"), issued a Notice seeking approval from the Office of Management and Budget ("OMB") for the collection of information regarding the model HECM Adjustable Rate Note and documentation for the HECM for Purchase program. In accordance with the Paperwork Reduction Act,[2] HUD is requesting comment from all interested parties on the proposed collection of information. Comments are due February 24, 2021.

The forms on which information is being collected include Form Number: HUD–92901, HUD–92902, HUD–92051, HUD–92561, HUD–92800.5b, HUD–92900–A, HUD-92300, HUD–1, HUD–1 Addendum, Fannie Mae ("FNMA")–1009, FNMA–1025, FNMA–1003, FNMA–1004, FNMA–1004c, FNMA–1073,

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[1] *Code of Ethics & Professional Responsibility*, NRMLA, http://www.nrmlaonline.org/nrmla/ethics/conduct.aspx.
[2] Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

HUD-92541, HUD-92544, NMPA-99A, and NPMA-99B. In the Notice, HUD states that the currently approved information collection is necessary to screen mortgage insurance applications in order to protect the FHA insurance fund and the interests of consumers and potential borrowers.

The Notice solicits comments from members of the public and affected parties concerning the collection of information described above on the following:

> (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
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> (2) The accuracy of the agency's estimate of the burden of the proposed collection of information;
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> (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
>
> (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encouraged interested parties to submit comment in response to these questions.

As the national voice of the reverse mortgage industry, and based upon feedback from our membership, we are pleased to submit the comments below, especially in the area of ways to enhance the quality, utility, and clarity of the information to be collected.

Comments

Model HECM Adjustable Rate Note

The Notice states the model HECM Adjustable Rate Note has been revised to align with FHA's transition from the London Interbank Offer Rate ("LIBOR") index to the Secured Overnight Financing Rate ("SOFR") index, which includes, but is not limited to, new definitions and replacement index language for future adjustable interest rate index transition events. Although not referenced in the Notice, the model HECM Adjustable Rate Mortgage also includes interest rate definitions and references to LIBOR. We assume any new definitions and replacement index language developed by FHA for the model HECM Adjustable Note will also be incorporated, as applicable, into the model HECM Adjustable Rate Mortgage.

NRMLA supports FHA's transition from LIBOR to the SOFR index (the "SOFR Transition"). Indeed, time is of the essence. In order to facilitate an orderly, and safe and sound, LIBOR transition, the Federal Reserve has announced that banks should stop writing contracts using LIBOR as soon as practicable and, in any event by, December 31, 2021. New contracts entered into before December 31, 2021 should either utilize a reference rate other than LIBOR or have robust fallback language that includes a clearly defined alternative reference rate after LIBOR's discontinuation.[3] Additionally, and of even greater import, Ginnie Mae has already restricted the eligibility of adjustable rate HECMs relying upon LIBOR for securitization into any HMBS pools on and after March 1, 2021.[4]

The SOFR Transition will require considerable effort and planning on the part of FHA to describe timelines, product details and key milestones in order to help stakeholders plan and adapt business policies, procedures, processes and systems. Changes to the model HECM adjustable note represent only a small portion of FHA's necessary planning and guidance associated with the SOFR Transition. In that regard, we observe the Notice announces revisions to the FHA model adjustable rate note, but the revised note itself has not been published as part of the Notice, nor does it appear to be otherwise available for public review. We encourage FHA to publish the revised model HECM Adjustable Rate Note as soon as possible and further provide the industry a reasonable period of time to comment on proposed revisions to the model HECM adjustable rate note before it is finalized.

Further, in this regard, given current interest rates in the U.S. residential mortgage market and over the past few years, and the interest rate market more generally worldwide, where some rate have gone negative, there is a critical need that HUD also amend the HECM Adjustable Rate Note to clearly establish not merely a limit on rate adjustments, but also an interest rate floor. The potential for negative interest rates accruing on LIBOR indexed HECM Adjustable Rate Notes may become more likely as LIBOR is phased out of the marketplace. In recognition of that concern, Freddie Mac has already revised the Lifetime Floor language in its ARM Notes and Riders. Instead of stating that the interest rate will never be "less than the Margin," Freddie Mac's revised ARM Notes and Riders state that the interest rate will never be "less than ____%." Sellers are then required to complete this new Lifetime Floor field in the revised ARM Notes and Riders and provide that the Lifetime Floor must equal the Margin for ARMs sold to Freddie Mac.[5] Similar changes to the HECM Adjustable Rate Note are essential to ensure the interest rate accruing on all adjustable rate HECMs will never be a negative rate.

Additionally, the SOFR Transition encompasses two distinct efforts. The first relates to the origination of new adjustable rate HECMs tied to SOFR. The second is the transition of legacy adjustable rate LIBOR indexed HECMs to SOFR. Each presents unique industry challenges impacting different processes and systems. For that reason, HECM originators and servicers respectfully request no less than [180] days advance notice before SOFR Index is required to either (i) originate new SOFR indexed adjustable rate HECMs, or (ii) to transition legacy LIBOR indexed adjustable rate HECMs to SOFR.

<u>HECM for Purchase</u>

In the Notice, FHA also proposes to strengthen the HECM for Purchase property eligibility requirements by requiring inspection documentation for newly built properties that will serve as collateral for HECM financing. Currently, only "existing properties" are eligible under the HECM program, which has been defined to require that construction of the collateral property is complete and habitable.[6] Consequently,

[3] *See* Statement on LIBOR Transition, Board of Governors of the Federal Reserve System, Federal Deposit Corporation, Office of the Comptroller of the Currency, November 30, 2020.
[4] *See* Ginnie Mae All Participant Memorandum 20-19: Limited Extension to Securitization Deadline for LIBOR Based Home Equity Conversion Loans, December 16, 2020.
[5] See Freddie Mac Bulletin 2020-01, February 5, 2020.
[6] *See* Mortgagee Letter 2007-06.

the HECM for Purchase program requires mortgagees to submit a Certificate of Occupancy, or its equivalent, as evidence that the property is complete and habitable as a condition of FHA insurance. FHA now proposes Mortgagees be required to complete and submit the following additional forms to FHA: (1) Form HUD–92541, Builder's Certification of Plans, Specifications, and Site; (2) Form HUD–92544, Warranty of Completion of Construction; (3) Form HUD–NPMA– 99–A, Subterranean Termite Protection Builder's Guarantee; and (4) Form HUD–NPMA–99–B, New Construction Subterranean Termite Service Record. These forms are currently required by FHA for maximum financing for FHA's Title II Single Family forward mortgage programs.

We initially observe the Notice suggests an intention on the part of FHA to allow new construction for HECM for Purchase. We applaud this development and note that such a change would require a modification of HECM property eligibility requirements permitting new construction and providing a definition for that term consistent with forward mortgages under HUD Handbook 4000.1, which includes proposed construction, properties under construction and properties existing less than one year.

We also concur with FHA's interest in aligning both the reverse and forward mortgage programs with respect to minimum property standards, subject to further alignment of the forward and reverse programs where such alignment furthers the interests of FHA, Borrowers and Mortgagees. In that respect we also encourage FHA to further align the reverse and forward mortgage programs with respect to down payment funding sources and interested party contributions.
Mortgagee Letter 2009-11 limited acceptable down payment funding sources in connection with HECM for Purchase loans, excluding the following types of equity and credits that are otherwise permissible for FHA forward programs under HUD Handbook 4000.1, Section II(A)(4)(d)(iii):

- Sweat Equity
- Trade Equity
- Rent Credit
- Interested Party Contributions up to 6 percent of the sales price toward the borrower's origination fees, other closing costs, pre-paid items and discount points.

Given the large equity investment (generally nearly half of the purchase price) required by borrowers in connection with HECM for Purchase transactions, we respectfully request that acceptable down payment funding sources for HECM for Purchase loans be treated the same as all other FHA purchase loans under HUD Handbook 4000.1. Eliminating such unnecessary distinctions would enhance the viability and encourage greater acceptance of the HECM for Purchase product in the marketplace.

In addition, interested party contributions are severely limited in connection with HECM for Purchase loans.[7] Currently, only the following interested party contributions are permissible:

- Fees required to be paid by a seller under state or local law.
- Fees customarily paid by a seller in the subject property locality.
- Purchase of the Home Warranty policy by the seller

Notwithstanding the foregoing, we note that 24 C.F.R. § 206.44(c)(2) expressly contemplates FHA may provide additional interested party contributions stating, "[t]he Commissioner may define additional

[7] *See* 24 CFR § 206.44(c).

permissible interested party contributions and impose requirements for permissible interested party contributions through a notice in the Federal Register."

By contrast, FHA forward mortgage programs, and even traditional or refinance HECMs, permit lender credits toward closing costs. Such credits may be viewed as interested party contributions under Section 206.44(c), and, as a result, such credits and price discounts to consumers are uniquely not permissible under the HECM for Purchase program. This arbitrary limitation effectively shifts costs to consumers and increases the overall cost of HECM for Purchase loans within the marketplace. Beyond increasing overall cost, this limitation further strips consumers of their ability to control closing costs by electing a higher interest rate and correspondingly reducing closing costs.

In view of the foregoing, we encourage FHA to further align its forward and reverse mortgage programs by permitting the HECM for Purchase program to accept (i) all permissible forward mortgage program down payment funding sources, and (ii) all allowable forward mortgage program lender closing cost credits, adjustments and discounts.

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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