National Reverse Mortgage Lenders Association
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FHA Resource Center
answers@hud.gov

Re: FHA Mortgagee Letter 2021-08 (March 11, 2021); Home Equity Conversion Mortgage (HECM) Program – Changes to Interest Rate Requirements Including Removal of the London Interbank Offered Rate (LIBOR) Index

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. NRMLA members make over 90% of the reverse mortgages originated today

Overview

On March 11, 2021, the Federal Housing Administration ("FHA") issued Mortgagee Letter 2021-08 ("ML 21-08"). Therein, FHA: (i) removed approval for use of the London Interbank Offered Rate ("LIBOR") index for adjustable interest rate HECMs; (ii) establishes the acceptance of the Secured Overnight Financing Rate ("SOFR") index and permits mortgagees to commingle index types for newly originated annual adjustable interest rate HECMs when establishing the expected average mortgage interest rate using the U.S. Constant Maturity Treasury ("CMT") and using the Secured Overnight Financing Rate ("SOFR") index to establish the initial mortgage interest rate and periodic Note rate adjustments; and (iii) sets zero percent (0%) as the "floor" for the index value used to determine the Note rate. FHA also published a revised HECM ARM Note and HECM Second ARM Note (collectively, the "Model HECM ARM Notes") for use with CMT and SOFR based adjustable rate HECMs going forward.

NRMLA applauds and commends FHA for using its authority under the Reverse Mortgage Stabilization Act of 2013 to take this proactive step to allow the continuance of adjustable rate HECMs in light of the

[1] *Code of Ethics & Professional Responsibility*, NRMLA, http://www.nrmlaonline.org/nrmla/ethics/conduct.aspx.

questionable on-going sustainability of LIBOR as an index and as the broader financial services industry transitions away from LIBOR to alternative reference rates.

Comments

Use of SOFR for Monthly HECM ARM Loans

While we understand that it is anticipated that initially only a 30-day average SOFR will be available, ML 21-08 specifies that lenders may only offer the SOFR index for Annually Adjustable HECMs. We respectfully request that FHA also allow mortgagees to offer a Monthly Adjustable HECM based upon the 30-day average SOFR index using the same commingled CMT index for the Expected Rate.

Rounding of Interest Rate Changes to 1/8th

Previously, mortgagees had the option of rounding the note rate of interest under adjustable rate HECM. FHA's prior model HECM ARM Note provided as follows:

> *Before each Change Date, Lender will calculate a new interest rate by adding a margin of ____ percentage points (__%) to the current Index.* [2]
>
> [2] If Lender intends to round the interest rate, the phrase "and rounding the sum to the nearest one-eighth of one percentage point (0.125%)" shall be added.

ML 21-08 does not address the rounding of the note rate of interest; however, Section 5(C) of the Model HECM ARM Notes now provide that "[*t*]*he Lender will then round the result of the Margin plus the Current Index to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Paragraph 5(D) of this Note, this rounded amount will be the Borrower's new interest rate until the next Change Date*." We are not certain why FHA removed the optionality of mortgagees to round the note rate of interest in connection with adjustable rate HECMs, however, requiring rounding of the note rate of interest to the nearest eighth in connection with adjustable rate HECMs through the revisions of the model adjustable rate HECM Notes, but not ML 21-08 itself, raises additional issues and need for clarification not addressed by ML 21-08. For the reasons outlined below, we respectfully request that FHA revert to its prior policy and allow, but not require, mortgagees to round the note rate of interest on adjustable rate HECMs.

First, neither ML 21-08 nor the Model HECM ARM Notes explain how the initial rate at closing should be set if it is required that the note rate be rounded to the nearest eighth on each change date. If the methodologies used to set the initial note rate at closing and the note rate at each change date are not consistent, then the rate cap established using the initial rate may conflict with a note rate rounded to the nearest eighth on a change date. For example, if the initial note rate is 4.110%, the cap with a maximum increase of 5% would be 9.110%. Then, if a change date index plus margin equals 9.100% (which is less than the cap), rounding that to the nearest eighth would give you 9.125% which exceeds the cap. Would the rate have to be changed to 9.110%, 9.100% or 9.000% (the highest rate rounded to the nearest eighth not exceeding the cap)?

We are also requesting guidance on the 30-day SOFR rate index. When HUD introduced the LIBOR index, the 1-month LIBOR as well as the 1-year LIBOR were published daily with rates five digits to the right of the decimal. HUD included guidance that those index figures "shall be rounded to three digits to the right of the decimal point." Like those LIBOR indexes, the 30-day SOFR is published daily with five digits to the right of the decimal. To prevent initial rates with up to five digits to the right of the decimal, we would recommend/request that HUD provide the same guidance for rounding to three digits to the right of the decimal for the 30-day SOFR index as well as any additional SOFR indexes approved in the future.

Further, mortgagees currently set the note rate on adjustable rate HECMs based on indices published on the first business day of week, go into effect the following day, and are good until the same process the following week (Original Process). Similar to how the LIBOR index is published daily in the Wall Street Journal, we understand the Federal Reserve Bank of New York (the "New York Fed") publishes the SOFR Averages and SOFR Index each business day on the New York Fed's website shortly after the SOFR is published at approximately 8:00 a.m. ET.[2] ML 21-08 is unclear whether mortgagees are required use the SOFR index published each morning for loans closed that day and the index would be reset each and every business day which is a different methodology than how LIBOR indexes were implemented. However, our members would like to use the same methodology for SOFR indexed HECMs that HUD provided guidance on for LIBOR indexed loans where you would use the index as published on the first business day of a week, and that index would go into effect the following day, and remain in effect for all loans closed until a new index was established using the same process the following week.. In this regard, we note that ML 21-08 states that it revises, and where it conflicts, supersedes the requirements in 24 CFR §§ 206.3 and 206.21, as well as Mortgagee Letters 2007-13 and 2016-16. However, Mortgagee Letter 2007-13 provides in part that: "The LIBOR indices are effective the day they are published, until such day the indices are published the following week." Mortgagee Letter 2007-13 (Oct. 12, 2007). It is not clear, but we believe that FHA did not intend in ML 21-08 that mortgagees establish notes rate of interest on adjustable rate HECMs each day, and thus did not intend to supersede the method of selecting the index top set note rates, as provided in ML 07-13. We request that FHA make clear that mortgagees may continue to select on index on the first business day of a week, regardless of whether the index selected is CMT or SOFR, and continue to use that index for loans being set to close until such day the indices are published the following week.

In any event, having initial rates with five digits to the right of the decimal and note rate changes rounded to the nearest eighth (three digits to the right of the decimal), and further make those calculations every day, as opposed to once a week, significantly increases operational requirements and burdens for HECM mortgagees. This also creates the possibility of inconsistencies among mortgagees, and the seniors they serve. Further, this requirement provides potential uncertainties and lack of clarity in some instances when rate caps are reached.

For the above reasons, we respectfully request that FHA revert to its prior policy and allow, but not require, mortgagees to round the note rate of interest on adjustable rate HECMs to 1/8th. We also respectfully request that mortgagees be allowed to use an index as published on the first business day of a week, until such day the indices are published the first business day of the following week, and not be required to use a particular index on any given day of the week. Finally, we request that FHA clarify that in the use of SOFR indexes, mortgagees shall round the index published to three digits past the decimal point.

[2] See https://apps.newyorkfed.org/markets/autorates/sofr-avg-ind#:~:text=Each%20business%20day%2C%20the%20New,approximately%208%3A00%20a.m.%20ET.

Section 5(B) of the Model HECM ARM Notes

New section 5(B) of the HECM ARM Note provides as follows:

> *Beginning with the first Change Date, the adjustable interest rate will be based on an Index that is calculated by an administrator (the "Administrator") and approved by HUD. The Lender must use the most Current Index value available before each Change Date, provided that if the Current Index is less than zero, then the Current Index will be deemed to be zero for purposes of calculating the Borrower's interest rate.*

We note that the new model HECM ARM Notes also provide definitions for both the CMT and SOFR indices. While "Administrator" is not defined in the new model HECM ARM Notes, we assume that it will be the New York Fed. However, only the SOFR index is published by the Federal Reserve Bank of New York, not the CMT index. Thus the revised language in section 5(B) of the new model HECM ARM Notes would be inaccurate if lenders offer and borrower apply for adjustable rate HECMs based upon a CMT index.

For this reason, we respectfully request that the first sentence of section 5(B) of the revised HECM ARM Notes be revised to read: "Beginning with the first Change Date, the adjustable interest rate will be based on the Index plus the Margin."

Section 5(D) of the Model HECM ARM Notes

Section 5(D) of the New Model HECM ARM Notes provides as follows:

> *The interest rate **the Borrower is required to pay at the first Change Date** will never increase or decrease by more than [___ percentage points (___%)] on any single Change Date. **Thereafter, the Borrower's adjustable** interest rate will never be more than [________ percentage points (___%)] higher or lower than the initial interest rate stated in Paragraph 2 of this Note.*

The added or new language is bolded. A plain reading of the first sentence suggests that the periodic limits would only apply to the first rate change, a result we do not believe FHA intended. We respectfully suggest changing the words in the first sentence to read: "… at the first or subsequent Change Date … ".

Implementation Dates

ML 21-08 provides that mortgagees must use the revised Model HECM ARM Notes for all HECMs closed on or after July 1, 2021. The revised Model HECM ARM Notes state that if the Current Index is less than zero percent (0%), then the Current Index will be deemed to be zero percent (0%) for purposes of calculating the interest rate. However, ML 21-08 also states that the HECMs closed on or after May 3, 2021, must use or have the Interest Rate Index Floor. We understand that most, if not all, of our members do not plan to use the SOFR index in the next few months. Further, we understand that the CMT index published will never be published by the Federal Reserve at a number below zero. Because lenders and their vendors need more time to program and implement the Model HECM ARM Notes, and because, as explained herein, we are requesting changes to the Model HECM ARM Notes, we respectfully request that FHA clarify HECM mortgagees need not use the index floor language in new model HECM ARM

Notes on HECM ARM loans closed on or after May 3, 2021 but before July 1, 2021, or such later date that FHA may specify.

Effective Dates Measured from Loan Closing Dates

ML 21-08 provides for effective dates that are based on a loan's closing date. For the reasons outlined above regarding the interest rate floor, and our requests for changes to the model HECM ARM Notes, we respectfully request that the effective date of ML 21-08 be based on case number assignment dates, not closing dates. Further, assuming FHA accepts our suggestions herein, we request that the effective date of these changes be at least two months prior to July 1, 2021, and that July 1, 2021 be made the effective date for all changes made by ML 21-08, and that the interim date of May 3, 2021 as the effective date for some changes (such as floor language in the Notes) be removed.

Other SOFR Indices

While ML 21-08 allows for the use of a 30-Day Average SOFR, we respectfully request that when other SOFR indices become available, such as a one-year SOFR, FHA also allows mortgagees to use such other SOFR indices.

Ginnie Mae

We note FHA's reference in ML 21-08 to Ginnie Mae, and in particular its issuance of APM 20-12 discontinuing the allowance of the pooling of LIBOR-based HECM ARM loans after a certain date. We appreciate and trust that FHA is also coordinating with Ginnie Mae on the allowance for pooling of SOFR-based HECM ARM loans.

Legacy HECM ARM Loans

As stated above, NRMLA applauds FHA for taking the proactive step under ML 21-08 to allow the continuance of adjustable rate HECMs with a SOFR index. We are also interested in FHA's plans to identify and select a replacement index for LIBOR-based HECMs that have been originated in the past and are still in force. In this regard, we note and appreciate HUD's participation on the Alternative Reference Rate Committee ("ARRC"), and ARRC's on-going deliberations and pronouncements regarding LIBOR cessation. We also note the recent pronouncement by U.S. federal banking regulators that LIBOR might continue to be available until June 2023. Nonetheless, we are interested in continuing to communicate with FHA on a replacement index for LIBOR-based HECMs still in force, and receiving as much lead time and notice as possible before that transition. Further, we appreciate and trust that FHA is focused upon, to the greatest extent possible, maintaining consistency of historical interest rate adjustments, both for HECM consumers and investors in such legacy HECM ARM loans. We look forward to further communicating with FHA on these issues.

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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