National Reverse Mortgage Lenders Association
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Re: Feedback for Draft HECM Sections of Handbook 4000.1

Introduction

The National Reverse Mortgage Lenders Association ("NRMLA") is the national voice of the reverse mortgage industry. With over 225 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 September 29, 2021, pursuant to FHA INFO #21-81, the Federal Housing Administration (FHA) announced the availability of the draft Home Equity Conversion Mortgage (HECM) Origination through Servicing sections of Handbook 4000.1 for stakeholder review and feedback (Draft Handbook). On November 1, 2021, pursuant to FHA INFO#21-94, FHA announced an extension to the public review and feedback period through December 31, 2021. We appreciate the extension of time to submit comments. Given the breadth and depth of proposed changes to the Draft Handbook, and that Handbook 4000.1 has not been updated for a very long period of time, we believe that some of our members may provide FHA additional comments beyond the January 31, 2022, feedback timeline. In that regard, we hope and trust that FHA will continue to consider any feedback it may receive after January 31, 2022, and prior to publication of updated Handbook 4000.1.

Further, while HUD encouraged interested stakeholders to use the Feedback Response Worksheet to provide feedback, we also are providing this cover letter to focus upon several items we feel are important to highlight.

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

Due and Payable Notices due to Borrower Death

On page 291, Lines 6 through 15, the Draft Handbook provides that the Mortgagee must provide notice to the Borrower's estate, heir, or other party with legal title to the Property securing the HECM within 30 Days of the Borrower's death or the end of the Deferral Period. The notice must provide the following options for the Borrower's estate, heir, or other party with legal title to the Property to resolve the HECM:

- satisfy the HECM for the lesser of the full debt or 95 percent of the current appraised value.
- sell the Property for at least the lesser of the outstanding principal balance or 95 percent of the current appraised value; or
- provide the Mortgagee with a DIL of Foreclosure.

The timing of the due and payable notice as proposed in the Draft Handbook is inconsistent with the timing of the due and payable notice under the 2017 Final HECM Rule. Further, as NRMLA has communicated to FHA on numerous prior occasions in connection with HECMs not subject to the 2017 Final HECM Rule, such language and requirement is operationally unrealistic and results in unreasonable industry-crippling curtailments. We request this section of the Draft Handbook be changed to reflect the 2017 Final HECM Rule, which provides as follows:

"The mortgagee shall notify the Commissioner within 60 days of the mortgage becoming due and payable when the conditions stated in the mortgage, as required by § 206.27(c)(1) have occurred." 24 C.F.R. § 125(a). Section 206.27(c)(1) governs the due and payable event triggered by the death of the borrower. Section 206.125(b) then goes on to state that after notifying the Commissioner, the Mortgagee shall then notify the borrower's heirs or estate within 30 days after notifying the Commissioner."

We respectfully request that FHA revise this portion of the Draft Handbook and apply the operative provisions of the 2017 HECM Final Rule concerning the due and payable notice to all HECMs, regardless of case number assignment date.

Model HECM Loan Documents

In 2017, approximately four (4) days prior to the 2017 HECM Final Rule becoming effective, FHA issued FHA INFO #17-40, indicating that it would not, at that time, publish updated model HECM loan documents, but would do so at a future date. FHA, however, indicated that Mortgagees should update the HECM loan documents to reflect the changes to the HECM program provided in the 2017 HECM Final Rule.[2] Such items included both non-substantive matters, such as changing the reference from "Secretary" to "Commissioner" and more substantive changes. Since that time, FHA has published a new model HECM Note to take into account LIBOR cessation;[3] but has not fully updated the model HECM loan documents to fully incorporate program changes reflected in the 2017 HECM Final Rule, nor has it incorporated the Non-Borrowing Spouse protections provided by Mortgagee Letter 2021-11 into the model documents. In connection with final publication of its updates to Handbook 4000.1, we urge FHA to also publish updated model HECM loan documents.

Further, on page 250, Lines 5 through 10, the Draft Handbook provides that Mortgagees must apply Borrower payments in the following order:

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[2] FHA INFO #17-40 (Sept. 13, 2017) ("Furthermore, mortgagees must ensure all loan documents comply with the HECM final rule. FHA will issue updates to existing model loan documents at a later date").
[3] See Mortgagee Letter 2021-08 (Mar. 11, 2021).

• to MIPs due, if any;
• to charges for Ground Rents, taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums.
• to interest on the Mortgage; and
• to the principal of the Mortgage.

This specified order of application of prepayments in the Draft Handbook do not agree with the current model HECM Note or any HECM Note.

The current model HECM ARM Note provides as follows:

All prepayments of the Principal Balance shall be applied by Lender as follows:

> First, to that portion of the Principal Balance representing aggregate payments for mortgage insurance premiums;
> Second, to that portion of the Principal Balance representing aggregate payments for servicing fees;
> Third, to that portion of the Principal Balance representing accrued interest due under the Note; and
> Fourth, to the remaining portion of the Principal Balance.

A Borrower may specify whether a prepayment is to be credited to that portion of the Principal Balance representing monthly payments or the line of credit. If the Borrower does not designate which portion of the Principal Balance is to be prepaid, Lender shall apply any partial prepayments to an existing line of credit or create a new line of credit.[4]

The current model HECM Fixed Rate Note provides as follows:

All prepayments of the Principal Balance shall be applied by Lender as follows:

> First, to that portion of the Principal Balance representing aggregate payments for mortgage insurance premiums;
> Second, to that portion of the Principal Balance representing aggregate payments for servicing fees;
> Third, to that portion of the Principal Balance representing accrued interest due under the Note; and
> Fourth, to the remaining portion of the Principal Balance.[5]

We respectfully request that the order of application of borrower payments set forth in the Draft Handbook be revised to match the current model HECM loan documents.

We also note that the order of application of borrower payments is also listed in another section at page 259 Line 13, however, this latter section appears to us to match the HECM model Note. FHA should either eliminate the passage on page 250 or make both of these two sections consistent with the HECM Model Notes and consistent with one another.

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[4] See Section 6 of Model HECM ARM Note at: https://www.hud.gov/sites/dfiles/SFH/documents/HECM_Adjustable_Rate_Model_Mortgage_First_Note_03-11-21.pdf.

[5] See Section 5 of Model HECM Fixed Rate Note at: https://www.hud.gov/sites/documents/HECM_MODEL_FIXED_NOTE.PDF.

Further, we would like to meet with FHA in the near future to discuss how the HECM Model Loan Documents may be updated in a manner that better assures that lenders are using documents that are in FHA's view appropriate, and in a manner that will provide the greatest degree of consistency across various lenders in the industry.

Principal Limit Lock Process

On page 54, Lines 2 through 4, the Draft Handbook provides that the Mortgagee must obtain a signed lock-in agreement from the Borrower evidencing that consent was given to lock-in the Expected Rate and mortgagee's margin, if applicable.

We note this passage suggests that a signed lock-in agreement would now be required, but that if a HECM borrower does not sign a lock agreement, such a borrower would no longer be automatically protected if the index upon which the expected rate is based changes between the time of application and closing (assuming the HECM closes within 120 days of issuance of its case number).

Please note that a reverse mortgage expected rate lock is NOT comparable to a forward mortgage rate lock. We urge FHA to revise this language to be consistent with guidance provided in ML 2006-22. We note that when the FHA issued the 2017 HECM Final Rule, it indicated that: "HUD will continue to allow the float down option per ML 2006-22" and that "ML 2006-22 provides useful background for interest rate lock in timeframes." The 2017 HECM Final Rule also stated that with the agreement of the borrower, the mortgagee may lock the expected rate.[6] This passage did not require the borrower to sign a lock agreement. Our members offer expected rate locks, as they have for years, pursuant to the issuance of a disclosure to the borrower, providing the borrower with any applicable float down in the index, without issuing what is analogous to a rate lock in the forward mortgage industry.

Further, consistent with that existing policy, the expected interest rate and principal limit are locked when the mortgagee takes the initial application. However, the "lock-in" period starts on the day that the FHA case number is assigned. In addition, the Draft Handbook should continue to permit the "float down" option, whereby the principal limit may be recalculated at closing if the expected interest rate has declined and is now lower than the expected interest rate at the time of the initial application.

Certain HELOCs as Mandatory Obligations

On page 160, Lines 20 through 27, the Draft Handbook provides that the Mortgagee may pay off the Borrower's Home Equity Line of Credit (HELOC) using Borrower funds, the HECM proceeds, or a combination of HECM proceeds and Borrower funds, as long as the HECM funds advanced at closing does not exceed 60 percent of the Principal Limit. There are no seasoning requirements associated with the payoff of a Borrower's HELOC.

This removes the ability to have a seasoned HELOC be considered a Mandatory Obligation and therefore implies that all HELOCs be treated the same as the industry today treats an Unseasoned HELOC. The Draft Handbook further restricts the borrower if Mandatory Obligations are greater than 50% of the Principal Limit. This appears to suggest that if a Borrower has a HELOC, the loan can only be closed if initial UPB does not exceed 60% of the Principal Limit. Therefore, if a borrower has an existing traditional loan treated as a Mandatory Obligation requiring 75% of the Principal Limit, and the borrower has a small balance HELOC as well, the Borrower would be required to bring enough cash to closing to pay off the HELOC and pay down the balance of the existing loan so that it does not exceed 60% of the Principal Limit.

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[6] 82 Fed. Regis. 7094, 7099 (Jan. 19, 2017)

The 2017 HECM Final Rule provides as follows:

The borrower may pay off, at closing, a Home Equity Line of Credit (HELOC) that does not meet seasoning requirements from borrower funds, the HECM funds, or a combination of HECM funds and borrower funds, as long as the draw from HECM funds does not exceed the percentage approved by the Commissioner under the authority of § 206.25(a). 24 C.F.R. § 206.36(c).

We respectfully request that FHA revise the Draft Handbook to incorporate the provisions of the 2017 HECM Final Rule allowing a seasoned HELOC to be treated as a Mandatory Obligation while requiring an unseasoned HELOC to be paid from the cash portion available to the borrower in addition to borrower funds.

Carryover Fully Funded LESAs on HECM-to-HECM Refinances

On page 210, Lines 21 through 23, the Draft Handbook provides that the Mortgagee must require a Fully Funded LESA for the new HECM when the existing HECM previously required a Fully Funded LESA based on the Borrower's unsatisfactory property charge payment history.

Please note that a new lender offering a HECM-to-HECM refinance has no way to determine why a LESA exists on the original HECM. A LESA on the original HECM may be due to an underwriting requirement or at the borrower's election. Further, even if the prior LESA was the result of an underwriting requirement, the borrower's financial condition may have changed. Whether a LESA should be required for a new HECM in the context of a HECM-to-HECM refinance should be based upon the underwriting requirements of the new HECM, not whether a LESA existed on the original HECM. We respectfully request that FHA revise the Draft Handbook to provide that a LESA should only be required on a new HECM refinancing a HECM if the underwriting of the new HECM requires a LESA, not whether a LESA existed on the original HECM.

Appraiser Certification and Licensing Requirements

On page 21, Lines 17 through 20, the Draft Handbook provides that the Mortgagee must order an appraisal from an Appraiser who is listed on the FHA Appraiser Roster and is qualified and knowledgeable in the specific market area in which the Property is located. The Mortgagee must evaluate the Appraiser's education, training, and actual field experience to determine whether the Appraiser has sufficient qualifications to perform the appraisal before assignment.

Given that FHA requires all appraisers to meet FHA's certification and licensing requirements to be listed on FHA's roster of approved appraisers (which is in conjunction with individual state licensing and education requirements), we believe the addition of a requirement on the part of Mortgagees to evaluate an individual appraiser's education and training is largely superfluous and may further delay an already time-consuming appraisal process.

Continued and Added Allowance of Certain Third-Party Origination Related Fees

On page 160, lines 33 through 34, the draft Handbook provides as follows:

The Mortgagee may charge the Borrower third-party fees incurred to originate the HECM. The local HOC may authorize or reject any other charge, or the amount of any charge, based on what is reasonable and customary in the area.
Currently, the HUD HECM Handbook, Paragraph 6-13(G), specifically states that: (i) an attorney fee is allowed, but (ii) that an attorney fee cannot be charged if the attorney is an employee of the mortgagee, or is an attorney who routinely receives referrals from a particular mortgagee AND issues the title insurance.

This section goes on to state that: “If an attorney who is not an employee of the mortgagee is routinely used on referral from the mortgagee to close loans and issue title insurance, the borrower may only be charged a notary fee.”

In our view, Paragraph 6-13 G of Handbook 4235.1 Rev-1 does not specifically references fees payable to an attorney “to close loans and issue title insurance.” What it does say is that if an attorney who is not an employee of the mortgagee is routinely used on referral from the mortgagee to close loans and issue title insurance, that attorney cannot charge an attorney fee

In many instances, lenders will engage an attorney to review a borrower’s trust document, and that attorney neither closes the loan nor issues a title policy.

Further, in this same section 6-13 of the current HECM Handbook, there are numerous other services that inure to the benefit of the lender (and/or HUD as the insurer of the loan), where a mortgagee may pass on the fee for such services to the borrower, as follows:

- Appraisal Fee and Inspection Fee;
- Credit Report;
- Deposit Verification Charge;
- Document Preparation Fee;
- Title Examination and Title Insurance Policy;
- Settlement Fees;
- Recording Fees and Taxes; and,
- Tests or Treatments.

In this vein, HUD even states that it does not require a survey, but the lender may order one for its own purposes and charge that fee to the borrower.

Further, section 4-5 of the Handbook does states: “The lender must be satisfied that the trust is valid and enforceable, that it provides the lender with a reasonable means to assure that it is notified of any subsequent change of occupancy or transfer of beneficial interest, and ensures that each borrower/beneficiary has the legal right to occupy the property for the remainder of his or her life.”

However, section 4-5 also states that: “HUD will insure HECMs on property held in the name of an *inter vivos* trust, … . … A living trust is created when the owner of property conveys his/her property to a trust for his or her own benefit or for that of a third party [the beneficiaries]. The trust holds legal title and the beneficiary holds equitable title. … The trustee's responsibilities are set out in a trust agreement.”

A trust is a legal document. A trust typically is and should be created with the assistance of a lawyer. A conveyance of title to real property from an individual into a trust is a legal transaction. The trust holds legal title. The trustee’s responsibilities are set out in the trust. A trustee must have the power to encumber the property in order for there to be a good lien.

Moreover, in our view, the review of trust documents is akin to an abstract of title – i.e., to determine who holds legal title to the property and must execute legal documents in order to fully effectuate a lien on the property to secure the loan.

While a lender should (and per HUD, must) be satisfied that the trust is valid and enforceable, among other things, we are confident, upon considered review, FHA would not want lenders reviewing these legal documents making that determination on its own without the professional assistance and in-put of an attorney.

As our members have reported to us, HOCs for many years in the past have not flagged an attorney trust review fee as an issue or finding. We respectfully request that FHA make clear in the revised HECM Handbook that reasonable and bona fide attorneys' fees for review of a borrower's trust document may be passed on to the borrower. We understand, in most instances, the fee for such a review can be as low as $125.

Additionally, more and more consumers are adding solar panels on their homes in order to harness cleaner and reduced cost energy. When a home has a solar panel, lenders must confirm any lien or lease issues with such solar systems. Often, such review includes the analysis of legal documents such as personal property leases and UCC-1 financing statements and security interest filings. We respectfully request that FHA make clear in the revised HECM Handbook that reasonable and bona fide attorneys' fees for review of a borrower's solar systems documents may be passed on to the borrower.

Further, the FHA Single-Family Handbook currently requires FHA single-family lenders, in connection with loans that include a manufactured home, to include as required documentation the following: (i) a HUD Certification Label (and if the appraisal indicates the HUD Certification Label is missing from the Manufactured Housing unit, the Mortgagee must obtain label verification from the Institute for Building Technology and Safety (IBTS)).

We respectfully request that FHA make clear in the revised HECM Handbook that reasonable and bona fide third-party verification fees for obtaining the label verification from the Institute for IBTS may be passed on to the borrower. We understand, in most instances, the fee for such a review can be as low as $165.

We also request that FHA clarify that mortgagees may also pass along reasonable and bona fide attorneys' fees, if necessary, to review homeowners' association's covenants, conditions, and restrictions (CC&Rs) in order to make a legal determination that no restrictions on transferability exist.

Consultant to Assist FHA in Implementing the New HECM Handbook

We applaud the FHA on its deep and detailed work on a draft revised HECM Handbook. As you can see from our above comments, and you will see in in our comments in the spreadsheet, in our view, there are many items to be addressed. Given all of the important work that FHA does, but also the importance that the HECM program plays in both in HUD's portfolio of programs, and for our American seniors, we respectfully request that FHA engage a HECM subject matter expert to consult with and advise FHA as it further implements this revised HECM Handbook and continues to manage the HECM program.

Conclusion

We appreciate your consideration of our comments herein and trust that you will act favorably upon our requests hereon.

Very truly yours,

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