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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 is to educate consumers about the pros and cons of reverse mortgages, to train lenders to be sensitive to clients' needs, to enforce our Code of Conduct and Best Practices[1], and to promote reverse mortgages in the news media.

Overview

Herein, NRMLA comments on the Board's proposed rule amending Regulation Z (Truth in Lending) to implement amendments to the Truth in Lending Act (TILA) made by the Mortgage Reform and Anti-Predatory Lending Act, as created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act or Act). The Dodd-Frank Act also directs the Board and other Agencies to promulgate rules on risk retention requirements in securitization transactions, with exceptions thereto for certain mortgage loans that meet the definition of a "qualified residential mortgage" to be crafted by the Agencies under the Risk Retention Rule. A qualified residential mortgage under the Agencies' Risk Retention Rule can be no broader than a "qualified mortgage" under the Board's Ability to Repay Rules.[2] For this reason, NRMLA requests that the Board specifically create alternative criteria for reverse mortgages to meet the definition of a qualified mortgage under its Ability to Repay – Qualified Mortgage Rule (hereinafter "ATR-QM"), so that the Agencies also may create a similar definition that will allow certain reverse mortgages (other than merely FHA-insured HECMs) to qualify for an exemption from the risk retention requirements. NRMLA also plans to comment on the Agencies' Risk Retention Rule asking that it create an exemption therefrom for non-FHA-insured reverse mortgage that meet certain limited criteria. For the foregoing reasons, we think review of this important issue by the Consumer Financial Protection Bureau (the "Bureau")[3] must be undertaken in its assessment of the ATR-QM proposal in order to assure the return of a viable conventional market for non-FHA-insured reverse

[1] http://www.nrmlaonline.org/nrmla/ethics/conduct.aspx
[2] Subsections 15G(e)(4)(A) and (C) of the Securities Exchange Act (15 U.S.C. 78a, *et seq.*), as added by Section 941 of the Dodd-Frank Act.
[3] The Board's ATR-QM proposal will become a proposal of the CFPB and will not be finalized by the Board.

mortgages, which market must include and will be based primarily upon a conventional structured finance system.

Regulatory Discussion

Section 1412 of the Dodd-Frank Act expands the ability to repay requirements already found in Regulation Z.[4] The provisions of Regulation Z on "higher-priced mortgage loans" do not apply to reverse mortgages.[5] Section 1412 of the Dodd-Frank Act provides that, in the case of a reverse mortgage, except for the purposes of subsection (a) of section 129C, to the extent that such mortgages are exempt altogether from those requirements, a "qualified mortgage" means a reverse mortgage which meets the standards for a qualified mortgage, as set by the Board in rules that are consistent with the purposes of subsection 129C(b)(2) of the Truth in Lending Act, as added by the Dodd-Frank Act.[6]

Thus, while the repayment ability provisions of TILA Section 129C(a) do not apply to reverse mortgages,[7] Section 1412 of the Dodd-Frank Act provides the Board with the authority to establish standards for reverse mortgages to meet the definition of a qualified mortgage.[8] While the ATR-QM proposal does not establish special conditions for reverse mortgages to be qualified mortgages, for the reasons outlined herein, we strongly believe that it should.

Section 941 of the Dodd-Frank Act adds section 15G of the Exchange Act to create risk retention rules for sponsors of securitizations. Section 941 provides that the Federal banking agencies, the Securities and Exchange Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency (the "Agencies") shall jointly issue regulations to exempt "qualified residential mortgages" from the risk retention requirements of section 15G. In defining the term "qualified residential mortgage", the Agencies shall define that term to be no broader than the definition "qualified mortgage" as the term is defined under section 129C(c)(2) of the Truth in Lending Act, as amended by the Dodd-Frank Act.[9]

In its proposed rulemaking under ATR-QM, the Board states that, although TILA Section 129C(b) does not specifically exempt reverse mortgages from coverage by the alternative requirements for qualified mortgages, the Board believes the alternative requirements for qualified mortgages are relevant only if a transaction is subject to the repayment ability requirements.[10]

While we generally agree with the Board's conclusion, we are not unmindful of the very important and crucial interplay of section 941 of the Dodd-Frank Act with the Board's rulemaking powers under Section 1412.

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[4] *See* 12 C.F.R. § 226.35.
[5] 12 C.F.R. § 226.35(a)(3).
[6] TILA Section 129C(b)(2)(A)(ix), as added by the Dodd-Frank Act.
[7] *See* TILA Section 129C(a)(8)), as added by Section 1412 of the Dodd-Frank Act.
[8] TILA Section 129C(b)(2)(A)(ix), as added by the Dodd-Frank Act, authorizes the Board to define a "qualified" reverse mortgage that "meets the standards for a qualified mortgage, as set by the Board in rules that are consistent with the purposes" of TILA Section 129C(b). Also, TILA Section 129C(b)(3)(B) authorizes the Board to prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are (1) necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of Section 129C(b), or (2) necessary and appropriate to effectuate the purposes of Sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. *See* 76 Fed. Regis. 27390, 27472 (May 11, 2011).
[9] Subsections 15G(e)(4)(A) and (C) of the Securities Exchange Act (15 U.S.C. 78a, *et seq.*), as added by Section 941 of the Dodd-Frank Act.
[10] *See* 76 Fed. Regis. 27390, 27407 (May 11, 2011).

As stated above, under section 941 of the Dodd-Frank Act, for purposes of the Risk Retention Rule, the Agencies shall define a "qualified residential mortgage" to be no broader than the definition "qualified mortgage" as the term is defined under section 129C(c)(2) of the Truth in Lending Act, as amended by the Dodd-Frank Act. If reverse mortgages that meet the definition of a "qualified mortgage" under the Board's ATR-QM rule are defined too narrowly, or not at all, the Agencies will be constrained from including reverse mortgages in a viable way in the definition of a qualified residential mortgage under the Risk Retention Rule. Indeed, in the proposed Risk Retention Rule, the Agencies state that reverse mortgages may be qualified mortgages only to the extent that they meet certain standards to be determined by regulation by the Board or the Bureau under section 129C(b)(2)(A)(ix) of TILA. The Agencies further state in the proposed Risk Retention Rule because the extent to which reverse mortgages may be considered a qualified mortgage under TILA is not yet known, the Agencies have excluded reverse mortgages from potential qualified residential mortgages status.[11] For this very reason, we believe the Bureau should expressly recognize some reverse mortgages as qualified mortgages, as outlined in our comments herein.

The Need for a Conventional Reverse Mortgage Market

The reverse mortgage market currently is comprised primarily of FHA-insured Home Equity Conversion Mortgage loans (or HECMs). This was not always the case. Based on information from our members, in 2006, conventional reverse mortgage securitizations reached approximately $1 billion. At the peak of reverse mortgage activity in 2007, conventional reverse mortgage were as much as 16% of the dollar volume of the reverse mortgage industry.[12] The conventional reverse mortgage securitization market showed robust signs of growth throughout the 2002-2007 timeframe, but receded parallel to the overall mortgage market's inability to sell mortgage backed securities. Our members report pent up demand for conventional reverse mortgage product, however, until a viable securitization market returns, access to conventional credit for this important financial services tool for seniors will be constrained.

Further, the Federal Housing Administration is subject to other pressures due to the current reliance on it by the broader mortgage market. Recently, to keep the HECM program viable, the principal limit factors of the HECM program were reduced,[13] and the annual mortgage insurance premiums increased from 0.50% to 1.25%,[14] thus lowering the proceeds available to seniors under the HECM program.

A return of the conventional market and additional reverse mortgage programs are needed to maintain access to credit and fill the need for this important financial services product for seniors. The return of the conventional reverse mortgage sector, we believe, will be unintentionally stymied if it is not possible for some reverse mortgages (other than FHA-insured HECMs) to meet the exception from the risk retention requirements afforded to qualified residential mortgages to be defined under the Risk Retention Rule yet to be finalized by the Agencies.[15] As outlined above, in our view, in order for this to be possible, some reverse mortgages, other than FHA-insured HECMs, must be able to meet the definition of a qualified mortgage under ATR-QM. Below, we propose alternative requirements for reverse mortgages to meet the criteria of a qualified mortgage under ATR-QM. We believe this will clear the way and make it possible for the Agencies to create an exemption from the Risk Retention Rule for some reverse mortgages that meet an alternative definition of a qualified residential mortgage for reverse mortgages, based on similar grounds as we propose herein for qualified mortgages under the ATR-QM. As stated

[11] *See* 76 Fed. Regis. 24090, 24120 (April 29, 2011).
[12] http://www.rminsight.net/investors-servicers/, last accessed July 21, 2011.
[13] *See* HUD Mortgagee Letter 2009-34 (Sept, 23, 2009).
[14] *See* HUD Mortgagee Letter 2010-28 (Sept, 1, 2010).
[15] As provided under section 15G(e)(3)(B) of the Exchange Act, as added by 941 of the Dodd-Frank Act, FHA-insured loans, which would include HECM loans, are statutorily exempt from the risk retention rules under section15G, and the Agencies proposed Risk Retention Rules recognize this fact.

above, we also plan to submit parallel comments to the Agencies regarding their proposed Risk Retention Rule.

Comment and Request

First, a reverse mortgage that meets the guidelines of the FHA HECM program should be deemed to be a qualified mortgage for purposes of the ATR-QM rule.

Next, we request that because reverse mortgages require no regular monthly repayment of principal or interest, that a reverse mortgages be deemed a "qualified mortgage" for purposes of ATR-QM if it meets the following criteria:

- Requires mandatory counseling prior to origination,
- Requires a financial assessment of the borrower according to procedures consistent with those to be established by HUD for the HECM program based on financial resources that are verified and documented, and taking into consideration applicable taxes, insurance and assessments affecting the collateral property,[16] and
- Carries no prepayment penalty.

While these two provisions (sections 941 and 1412 of the Dodd-Frank) are designed to serve ostensibly two different purposes,[17] with the inclusion of some reverse mortgages that meet the above described alternative criteria as "qualified mortgages" under ATR-QM rule, a framework will be established for the Agencies to include certain reverse mortgages within the definition of "qualified residential mortgage" for purposes of the exemption from the Risk Retention Rule.

The above criteria take into account some consumer protection provisions, which meet the policy goals and the purposes of the ATR-QM rule. We also plan to submit comments to the Agencies to propose criteria for some reverse mortgages to meet the definition of a qualified residential mortgage in order to meet the risk reduction goals of the Risk Retention Rule, thereby protecting investors without stifling the return of the conventional reverse mortgage structured finance market.

Conclusion

We trust that you will appreciate the connection between the definition of a "qualified residential mortgage" under the proposed Risk Retention Rule, and a "qualified mortgage" under the proposed ATR-QM, and how important it is to the reverse mortgage industry that the Agencies are provided with some room to fashion a definition of a qualified residential mortgage under the Risk Retention Rule that includes certain reverse mortgages, as described above. We also urge you to consider the importance of reverse mortgages as an alternative for our nation's seniors and the compelling need for a quicker return of the conventional reverse mortgage structured finance market. We appreciate your favorable consideration of our comments.

[16] We understand that HUD is currently drafting a proposal to implement a financial assessment review for senior loan applicants interested in a FHA-insured HECM loan. We understand such a proposal may take into account a senior's ability to pay for such items as property taxes and hazard insurance related to the collateral property securing a HECM, and that the proposal may be finalized later this year.

[17] Section 1412 of the Dodd-Frank Act and the ATR-QM rule can be seen to include consumer protection provisions to assure that "forward" mortgage loan borrowers have the ability to repay such loans and that loans meeting its criteria are appropriate for borrowers. See also footnote 8, *supra*, discussing the consumer protection provisions and access to credit goals of the ATR-QM rule. The Risk Retention rule is designed in part to restore investor confidence in the structured finance market.

July 22, 2011

Very truly yours,

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