Comments of Boston Community Capital and Aura Mortgage Advisors
on
Truth in Lending (Regulation Z)
Proposed Amendments to Ability-to-Pay Standards
76 Fed. Reg. 6621 (January 30, 2013)
Docket No. CFPB-2013-002
RIN: 3170-AA34

Submitted
February 25, 2013

Boston Community Capital and its affiliate, Aura Mortgage Advisors, LLC, are pleased to submit these comments to the Consumer Financial Protection Bureau (CFPB) in support of the proposed exemption of certain non-profit creditors and certified CDFIs from the "qualified mortgage" amendments to the Ability-to-Pay Standards of the Truth-in-Lending Act (TILA) regulations. The proposed exemption preserves access to credit for low- and moderate-income consumers by allowing non-profit mortgage lenders and certified CDFIs to continue to offer residential mortgage loans that do not qualify for "safe harbor" status without assuming the potential liabilities associated with such loans. Based on our experience lending in low-income communities for nearly three decades, and our experience operating a foreclosure relief initiative that has provided affordable, fixed rate mortgages over the last four years to over 240 low- and moderate-income homeowners facing foreclosure, we believe the proposed exemption for non-profits and certified CDFIs is both appropriate and necessary to preserve access to affordable residential mortgage loans for low- and moderate-income consumers.

Founded in 1985, Boston Community Capital (BCC) is a non-profit organization with a core mission to build healthy communities where low-income people live and work. Boston Community Capital operates Boston Community Loan Fund, Boston Community Venture Fund, Boston Community Managed Assets, and Aura Mortgage Advisors, all of which are certified CDFIs. Over our almost three decade history, we have provided over $850 million in loans and investments to support affordable housing, child care facilities, schools, community health centers, businesses and community facilities in low- and moderate-income communities across the country.

Aura Mortgage Advisors, LLC (Aura), a certified Community Development Financial Institution (CDFI) and an affiliate of Boston Community Capital, is a licensed, residential mortgage lender (NMLS # 23467). Boston Community Capital established Aura in order to pursue a unique, first in the nation, foreclosure relief undertaking known as the Stabilizing Urban Neighborhoods (SUN) Initiative. Highlighted by Federal Reserve Chairman Ben Bernanke as "an innovative strategy to prevent occupied homes from becoming vacant and creating a strain on the community" (April 29, 2011), SUN acquires foreclosed properties at current distressed market values before evictions occur and sells them back to existing owners and tenants, providing 30-year fixed-rate mortgages through Aura.

In the communities in which we work, predatory mortgage values far exceeded those that could be supported by historic and long-term income profiles in those communities, and those artificially high values will not be achieved even as the housing market recovers. As a result, current distressed values and the mortgages Aura provides are both affordable to the residents we are working with and represent the highest net present value that lenders will receive for the foreclosed property. Our program, therefore keeps residents in their homes, maintains homeowners with a stake in the community, stabilizes low-income neighborhoods and minimizes the financial impact on lenders.

Since launching the SUN Initiative in late 2009, Aura has provided over $50 million in mortgage financing to over 240 Massachusetts homeowners, stabilizing over 350 households and reducing homeowners' mortgage principal balance and monthly mortgage expense, on average, by 40%. Boston Community Capital is currently exploring the applicability of the SUN Initiative to low- and moderate-income communities in states other than Massachusetts.

Aura's borrowers cannot obtain a new residential mortgage in the conventional market because they are in default on their existing mortgages or in foreclosure. That's why they come to Aura. The credit scores of Aura's borrowers – impaired by delinquency, late payments or collection accounts resulting from financial hardship, and, in many cases, bankruptcy – typically range from the low 400's to the low 600's, well below the standards for FHA mortgages or, indeed, for any sensibly priced commercial mortgage product. However, our experience demonstrates that, despite poor credit histories, homeowners with a stable income can support a "right-sized" mortgage. Aura requires a careful, manual underwriting of each individual applicant both to understand the circumstances leading to the prior mortgage default or foreclosure and to originate an affordable mortgage loan based on the borrower's ability to repay.

Aura has developed underwriting guidelines that combine conventional and alternative methodologies for evaluating applicants' credit histories and income. These guidelines provide a framework that is responsive to the unique goals of the SUN Initiative (keeping homeowners and occupants in place with affordable fixed rate mortgages that allow homeowners to build equity) and the situation of the applicants (low- and moderate-income households who are in default or who have been through foreclosure), while focusing on ensuring reasonable ability to repay.

Aura does not utilize desktop underwriting or credit scores; as noted above, all underwriting is manual. The goal of keeping homeowners in their homes is balanced by the express requirement of establishing sound evidence of ability to repay. In balancing these goals and requirements, our program meets the needs of consumers who would be unable to qualify for conventional mortgage loans by making exceptions to standard underwriting guidelines in cases where mitigating circumstances exist. For example, "qualified mortgage" standards would require a 43% maximum total debt-to-income (DTI) ratio. While many of our applicants meet that requirement, Aura will make loans at ratios of up to 48% DTI in cases where a borrower's individual financial circumstances (e.g. income level and pattern of savings over the last twelve months) establish a reasonable ability to repay the mortgage.

The types of creditors exempted in CFPB's proposed amendments to the TILA regulations, including State Housing Finance Agencies, HUD-certified non-profits and CDFIs generally serve low- and moderate-income consumers and communities. In general, they share a mission of creating access to credit for low- and moderate-income borrowers and promoting economic development in underserved communities, rather than a goal of maximizing profit. They often offer mortgage loan products that depend on flexible and varied underwriting guidelines and that include specialized elements such as soft-second loans, down payment assistance, shared appreciation mortgages, and built-in savings features. These mortgage loan products – often developed for borrowers who have experienced financial hardship or who would not qualify for traditional mortgage loans – do not fit the proposed requirements for "qualified mortgages." Such loan products do, however, balance access to residential mortgage credit for low- and moderate-income borrowers with a focus on the borrower's ability to repay.

The CFPB correctly points out that CDFIs, like Aura and its SUN Initiative, promote homeownership, provide safe lending alternatives in underserved communities, and have a mission-based incentive to provide responsible and affordable credit, to engage in community-focused lending and to originate residential mortgage loans that reasonably reflect a borrower's ability to repay.

We also note that the costs associated with manual underwriting and the development of non-standard mortgage loan product features are incurred by CDFIs, like Aura, but are not typically incurred by conventional mortgage lenders. Adding an additional set of costs necessary to implement and monitor compliance with ability-to-repay requirements is likely to severely strain a CDFI's ability to create and maintain a sustainable mortgage lending business. Excluding CDFIs and certain non-profits from the protections from liability available to qualified mortgage lenders further exacerbates the potential cost of providing mortgage credit. Taken together, these factors may impair the ability of CDFIs and certain non-profits to provide residential mortgage loan products to underserved communities.

We believe such organizations should, therefore, enjoy the benefits of an exemption from the ability to repay requirements – notwithstanding that the residential mortgages they originate may not meet CFPB's qualified mortgage requirement.

We understand that Aura and the SUN Initiative may also fit into an exemption to the ability to repay requirements because the credit extended is pursuant to a homeownership stabilization and foreclosure prevention program. We are concerned that, at least with respect to low- and moderate-income communities, a large majority of conventional residential mortgage lenders will limit their potential liability by choosing to originate only qualified mortgages. As noted above, many low- and moderate-income borrowers will not qualify. Thus, availability of residential mortgage loan products and credit will constrict in such communities unless CDFIs, like Aura, or certain other non-profits fill the credit gap by expanding our offerings. Thus, we believe that the exemption from the ability to repay requirements is important not only for the residential mortgage loans we currently provide but also for such loans as we may provide in the future. Accordingly, we believe that providing exemption based on CDFI or certain non-profit status, as currently proposed, is a better route than providing exemption based on a specific set of mortgage products.

We appreciate the opportunity to provide these comments on CFPB's proposed amendments to TILA regulations. Please do not hesitate to contact me if we can provide additional information.

Best,

Elyse D. Cherry

CEO, Boston Community Capital
President, Aura Mortgage Advisors