

**National Consumer Law Center
(on behalf of our low-income clients)**

**Response to ULAD
Proposed Revision of
Uniform Residential Loan Application**

June 17, 2014

Overview

Thank you for inviting us to participate in your revision of the Enterprises' uniform residential loan application (URLA).¹ We understand the importance of the URLA to the lending industry as the primary compilation of a loan applicant's personal data. As the industry moves to a more standardized data retention system, the URLA will become even more important.

The Enterprises seem to view the URLA in two ways. When first submitted and completed, it is the basis for underwriting the consumer's application. But later, once the parties have agreed to the loan terms and set a closing date, the form is treated as the consumer's offer to enter into a contract with the lender on the terms specified in the application. The lender then accepts the offer and funds the loan.

The reality is more muddled and consumers experience the URLA from a very different perspective.

To a consumer, the URLA is typically just one of many forms the consumer receives from the lender. The lender completes it for the consumer and controls much of the content. For a consumer, the loan application process generally does not start with the URLA. Instead it begins with a conversation with a loan originator (either a broker, or retail loan officer). If that conversation leads the consumer to continue with the process, the loan originator does not just hand the consumer a blank URLA and say "give me this and come back when you're done." Instead, the loan originator walks the consumer through the application, asking each question and filling-in the consumer's answer. In practice, the URLA is more of an interview script than a consumer-oriented form.

Depending on the question, the loan originator may not even ask the consumer the actual question as written on the form. Instead the originator may simply discuss the consumer's financial needs and personal situation with the consumer and then enter the relevant information in the appropriate blanks on the form. The loan originator may do this on a paper version of the form but, increasingly, the consumer's data is entered directly into an electronic version of the form, which in turn feeds directly into the lender's origination software. Some parts of the form will not be completed during this conversation. The consumer may not have all the required information, or the information may be provided by the lender. Information may also be changed at a later date due to errors or new developments.

¹ We also thank you for allowing us to submit our comments in this format, rather than via Jive. We found that the electronic method was not conducive to the types and format of comments we found a need to submit.

This difference in perspectives drives most of our comments and recommendations below.

Create a different version of the form for use at closing.

In general we have no objection to the layout of the proposed new URLA or the content. But we do encourage you to make some modifications to reflect more accurately how the URLA is used in practice. In addition to being a graphical representation of the consumer’s personal data, the ULRA serves two purposes:

1. At the beginning of the application process it is a questionnaire used by the loan originator to gather essential data for underwriting the loan application. It is *not* a form completed by the applicant.
2. At the end of the process, the form serves to confirm a deal that has already been tentatively reached. It reflects the information the lender has relied upon, states the loan terms the consumer has agreed to formally accept, and asks the consumer to sign at the bottom to affirm all of the above.

To reflect these two roles, there should be two versions of the URLA. The version proposed in this ULAD review would be used at the beginning of the process. But at the end of the process--as the parties approach the closing, the data should be reformatted in a way that better reflects its use to confirm information previously provided. While some may view the closing as the submission of an application or offer and the consummation of an agreement, the truth is that the closing is merely the papering of a deal already reached in principle. Having the consumer sign a document labeled “application” at the closing is deceptive and not reflective of reality.

Question #3: Is there data you would like to see added to the proposed URLA form?

| Proposed Data | URLA Form Section | Business Justification |
|----------------------------------|-------------------|--|
| APR requested | III | Consumers sometimes request a specific APR but there is no way to capture that data. While industry may respond that consumers <i>do not</i> do so, that response should not be a basis for excluding this data because: <ul style="list-style-type: none"> a) industry does not currently track whether consumers request an APR because the current form does not allow them to do so; and b) industry actively discourages consumers from requesting an APR. Putting the APR on the application will also help consumers identify changes in the loan cost over time. |
| Escrow/impound account requested | III | Consumers sometimes want an escrow account even when one is not required, but there is currently no way to capture that request. The failure to capture this request can cause significant problems and wastes time if the lender is unable to offer escrow accounts or if the lender later offers a loan without escrow and consumer does not discover/realize this until settlement (or worse--afterwards). |

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|---|-----|---|
| More budget information | IV | The form does not capture enough information to do a residual income analysis. VA loans and more cautious lenders require a residual income analysis. Moreover, such information may be useful in an analysis of compliance with Dodd-Frank’s ability to repay rule. |
| Version tracking | X.7 | <p>The proposed form captures whether this is the <i>initial</i> or <i>final</i> application, but there are often <i>intervening</i> versions too. Some originators prepare the initial application on paper. Sometimes the application is updated or revised if the borrower's information changes before closing, or if the borrower cannot get the loan terms desired. The current version could force the user to input incorrect information (that the application is the initial or final version).</p> <p>We recommend adding a checkbox that would indicate: a) that the version is an intervening one, b) a version number, and c) a date/time stamp. For example:</p> <p><input type="checkbox"/> Intervening (ver. 2, Jan. 1, 2014, 1:52pm)</p> <p>This information would greatly assist with managing the morass of documents that consumers get and that lenders retain. This information will help alert consumers to changes in their application that need their review. Otherwise, they may erroneously assume that the copy they have received is merely a duplicate of a previous version.</p> |
| Fields indicating which parts of Section VI should be left blank for streamlined refinancings | VI | In a streamlined refi the lender does not check the borrower's credit report. Therefore lenders sometimes leave parts of the Liabilities section blank. As designed, however, this implies that the borrower has no such liabilities. When such a lender requires the borrower to sign an acknowledgment that the form is correct, the borrower must, therefore, lie or manually list all of their liabilities to correct the form. A check box labeled "not required" or "do not complete this section" would resolve this problem. |

In addition, we note that the “**Years School**” field has been removed from the Borrower Information section of the form. We believe this field should be retained. The amount of education a borrower has completed is highly relevant to whether the borrower will be able to understand the terms of the loan offered. For example, more complex loans (such as POARMs) are particularly unsuitable for borrowers without a college education (or possibly even graduate school!). A borrower’s education is also relevant for cross-verifying other aspects of the application, such as employment and income. For example, a loan application that lists a high income or employment requiring a college degree would be a red flag if the same application showed only a high school education.

Question #4. Do you have any other comments about the proposed form or data in the proposed form?

Change the label for III.3 from "Amortization Type" to "Interest Rate Type." Webster's New World College Dictionary (4th ed.) defines "amortize" as "to put money aside at intervals, as in a sinking fund, for gradual payment of (a debt, etc.) either at or before maturity." The options in section III.3 (fixed, adjustable, or step-rate) describe how the interest rate will be determined-- not how the loan amortizes.

Question #5. Is the proposed text more clear and understandable than the language currently in use?

The introductory material at the top of the form, above the "Borrower Information" section should be changed. As drafted the first sentence is blatantly incorrect. The application is plainly not designed to be completed by the borrower. It is designed to be completed by the loan originator with the borrower answering questions as the originator asks them.

Many borrowers will not understand or be able to answer many of the questions, for example: whether they live in a community property state; the APN of the subject property; whether they are seeking a "conventional" mortgage, FHA, or other type of loan (this is often determined by what the lender offers); the difference between a 'cash-out' and 'limited cash-out' loan; what a streamlined refinance is; and much of the info requested in II.16, II.19, and III.4. The proposed URLA is an interview questionnaire for loan originators and the instructions should reflect that.

Question #12. Do you have any concerns regarding the proposed [Acknowledgement, Agreement, Authorization]?

(a) The opening paragraph of this section (IX.1) contains excessive legalese that few will read or understand. We recommend changing it to "I agree that: (1) the information. . . ." We are aware of the legal significance of this section, which is why we believe it should be edited to help borrowers understand what they are signing. If you have any caselaw or other legal authority suggesting that the language in the proposal is actually necessary, we would very much like to see it.

(b) The paragraph numbers in IX.2 duplicate those in IX.3-.5. We recommend changing the numbers in IX.2 to letters.

(c) Paragraph 9 (item IX.10) is a bigger problem. Under E-Sign, this consent is not valid, and it should not purport to be. There should be no mention of electronic conversion in this document. If the application is to be converted, the consumer's consent can be obtained at that time. This language would allow an electronically illiterate consumer, without any access to the Internet, to have consented to the conversion of a paper application to an electronic one, without anything further. Such a consumer would then have no access to their application. Aside from being unfair to the borrower, this could facilitate loan originator fraud. Electronic conversion would allow a disreputable originator to change the application without the consumer's authorization.

(d) The authorization (IX.13) is overly broad because the phrase "any time . . . after Loan consummation" is not limited. After the account has been closed or discharged in bankruptcy, there is no valid reason for the creditor or holder to access the borrower's creditor report or otherwise obtain verification data. We recommend limiting the authorization to "any time before and after Loan consummation *so long as this account remains open.*"

(e) The form also needs an acknowledgement by the loan originator who completes the form. We suggest:

"I certify that I have transcribed the information provided by the borrower accurately and I acknowledge that I may be liable for damages to the borrower and the lender (or their assigns) if I have falsified any information on this application."

Adding an acknowledgment for the loan originator is appropriate and in keeping with actual practice--that the originator completes the form for the borrower. A significant amount of mortgage fraud has involved the falsification of information on the loan application--often involving industry insiders.² Adding this acknowledgment will protect the lending industry as much as it will homeowners.

Question #13. Do you think potential borrowers will have an opinion about this provision [Borrower Consent for Counseling (#11)]?

No, few borrowers will read it. But, so long as the referral information is limited to contact information (name, address, and phone number) and the counselor is HUD certified, the borrowers that do notice this paragraph will probably not object.

Question #15. Do you see any issues or conflicts between the way information is captured here and the Uniform Closing Disclosure?

The APR is missing from the proposed application. The form has fields for the interest rate and some closing costs, but not for the APR. Consumers should be encouraged to apply for a loan at or below a specific APR. This makes it easier for consumers to compare offers from different lenders. It also makes it easier for the lender to construct an offer. If a consumer specifies a maximum interest rate, a specific loan term, and a specific loan amount, the lender's only flexibility is in the closing costs. But if the consumer specifies a maximum APR instead of an interest rate, the lender has the flexibility to construct an offer with different interest rates and closing costs. Adding the APR to the application will also help consumers identify changes in the loan cost over time. It can be difficult for consumers to keep track of all the many closing costs that add to the price of a loan. But a consumer is more likely to notice that the APR is higher (or lower) than the one listed on their loan application or other documents.

We anticipate that the industry will respond to this recommendation by saying "nobody requests an APR," or "nobody understands the APR." But we note that, even if borrowers do request an APR, there is no place on the URLA to capture that data. And, in our experience, some industry participants actively discourage consumers from making such a request.

² FBI, Financial Crimes Report to the Public 2007, October 1, 2006 - September 30, 2007, available at http://www.fbi.gov/stats-services/publications/fcs_report2007 (last viewed 6/16/2014) ("Based on existing investigations and mortgage fraud reporting, 80 percent of all reported fraud losses involve collaboration or collusion by industry insiders.").

As to the criticism that nobody understands the APR: There is no need to understand it. The loan with the lower APR is cheaper. Researchers have proven that consumers are more likely to select the cheaper loan when the APR is prominently displaced on the disclosure documents.³

Conclusion

Thank for your the opportunity to participate in this process. We would be happy to further discuss any of the issues raised in our comments.

³ Stark, Debra Pogrud and Choplin , Jessica M. and LeBoeuf, Mark A. and Pizor, Andrew G., When is Consumer Understanding Necessary to Make Wise Home Loan Decisions? Testing Enhanced APR Disclosure And General Financial Literacy (July 16, 2013), *available at* <http://dx.doi.org/10.2139/ssrn.2294590>.