



Mailing list Consumer Protection/Data Protection

Mailing list Supervision/ Accounting/ Money Laundering

Brussels, 19 December 2014

JP

EBA consultation on draft guidelines on creditworthiness assessment and on draft guidelines on arrears and foreclosure

Dear Madam or Sir,

On 12 December 2014 the European Banking Authority (EBA) has published two consultation papers on draft guidelines on creditworthiness assessment and on draft guidelines on arrears and foreclosure in the context of the directive 2014/17/EU on credit agreements for consumers relating to residential immovable property. The guidelines aim to ensure a consistent implementation and use of the provisions set out in the directive by the competent authorities of the different member states.

Creditworthiness assessment

Based on article 18 of directive 2014/17/EU, the creditor has the obligation to assess the creditworthiness of the consumer before concluding a credit agreement. Article 20 (1) requires that the creditworthiness assessment is carried out on the basis of information on the consumer's income and expenses and other financial and economic circumstances which is necessary, sufficient and proportionate. The information can be obtained from internal or external sources.

The intention of the EBA guidelines is now to further specify the process of the creditworthiness assessment. In this context, information on the consumer's income should not only include a verification of a consumer's underlying income capacity but also the consumer's income history and any variability over time. This information has to be provided by sources that are independent of the consumer. In the case of consumers that are self-employed, the creditor should verify additional information on the consumer's income. This information should be verified by third party documentation. The creditor should maintain complete documentation of the information that leads to mortgage approval, and maintain this documentation for at least the duration of the credit agreement. The documentation should be made available for competent authorities on request. Additionally, the creditor should ensure that a record with an adequate explanation of the steps taken to verify income is readily available for competent authorities.

To ensure that a credit is made available to the consumer only where it is likely that the obligations resulting from the credit agreement are met, relevant factors such as other servicing obligations, their interest rates, and the outstanding principal on such debt should be taken into account. Evidence of delinquency, as well as directly relevant taxes and insurance shall be taken into account, too. Furthermore, reasonable allowances for committed and other non-discretionary expenditures, such as the consumer's living expenses should be made by the creditor. If the loan term extends past normal retirement age, the creditor should take appropriate account of the adequacy of the

consumer's likely income and ability to continue to meet obligations under the credit agreement in retirement. Moreover, the creditor should ensure that the consumer's ability to meet obligations under the credit agreement is not based on the expected significant increase of the consumer's income unless the documentation provides sufficient evidence. On the contrary, the creditor should make prudent allowances for potential negative scenarios in the future, including for example, an increase in benchmark interest rates in the case of variable rate mortgages. Speaking more generally, the creditor should assess the consumer's ability to meet his obligations under the credit agreement without causing the consumer undue hardship and over-indebtedness. The creditor should establish sound processes to assess the consumer's ability to meet obligations under the credit agreement, review these processes at regular intervals, and maintain up-to-date records of those procedures. Last but not least, the creditor should identify groups of loans with a higher risk profile, and has to take this into account when assessing consumers' creditworthiness.

In general, the creditor should design loan documentation in a way that helps to identify and to prevent misrepresentation of information by the consumer, the creditor, or a credit intermediary.

The guidelines are based on the provisions of the Opinion of the EBA on Good Practices for Responsible Mortgage Lending, which was published on 13 June 2013.

Arrears and foreclosure

Based on article 28 of directive 2014/17/EU, the creditor should exercise reasonable forbearance before foreclosure proceedings are initiated.

Therefore, the creditor should establish and regularly review procedures to detect early indications of consumers going into payment difficulties. Policies and procedures for the effective handling of and engagement with consumers in payment difficulties shall be established. Additionally, the creditor should provide adequate training for staff dealing with consumers in payment difficulties.

When a consumer goes into payment difficulties, the creditor should work with the consumer to find out why the difficulties have arisen. Those meetings with the consumer should be conducted in privacy having regard to data protection legislation. The creditor should maintain a level of communication with a consumer in payment difficulties that is proportionate to the information requirements, and not excessive. Furthermore, the creditor should provide sufficient information, for example, through websites and written materials, and support for consumers in, payment difficulties. By doing so, the creditor should communicate clearly and in plain language. The information provided to a customer in payment difficulties should at least include the number of payments missed, the total sum of the payment shortfall, the charges incurred as a result of the payment shortfall, and the importance of the consumer co-operating with the creditor to resolve the situation.

Concessions to the consumer in payment difficulties may include a total or partial refinancing of a credit agreement, or a modification of the previous terms and conditions of a credit agreement. This modification may include the extension of the term of the mortgage, the change of the type of the mortgage, the deferral of payment of all or part of the instalment repayment for a period, the change of the interest rate, or the offer of a payment holiday.

In doing so, the creditor should document the reasons why the options offered to the consumer are appropriate for his individual circumstances and should make and retain adequate records of its dealings with the consumer in payment difficulties for a reasonable period of time.

The guidelines are based on the provisions of the Opinion of the EBA on Good Practices for the Treatment of Borrowers in Mortgage Payment Difficulties, which was published on 13 June 2013.

Next steps

Please find attached both consultation papers of EBA. If you have comments on the consultation we would be grateful if you would send your responses to the EFBS office by **9 February 2015**.

If you have further questions, please contact us at any time.

Yours sincerely,



Andreas J. Zehnder
Managing Director
European Federation of Building Societies

Annexes:

- EBA consultation paper: Draft Guidelines on creditworthiness assessment
- EBA consultation paper: Draft Guidelines on arrears and foreclosure