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November 20, 2014

**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** CFPB Bulletin 2014-03 on Social Security Disability Income Verification

On November 18, 2014 the CFPB issued Bulletin 2014-03 to remind lenders against discrimination in connection with verification of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) income (herein collectively referred to as "SS income") received by mortgage applicants. To view and/or print the bulletin in full, click this [hyperlink](#). Below is a brief summary of the main points of the bulletin:

1. ECOA and its implementing Regulation B prohibit lenders from discriminating against a mortgage applicant because all or part of the applicant's income comes from a public assistance program, which includes SS income. And while they also permit a lender to take into account the length of time an applicant will likely remain eligible for such income in determining creditworthiness, the bulletin warns that fair lending concerns (i.e., disparate treatment or disparate impact) could arise under ECOA and Regulation B if a lender requires documentation beyond what is required by applicable agency or secondary market standards and guidelines to verify that the SS income will likely continue, such as information about the nature of an applicant's disability or a letter from an applicant's doctor.

2. CFPB's Ability to Pay/Qualified Mortgage Rule, HUD's standards for FHA insured loans, VA's standards for VA guaranteed loans, and Fannie Mae and Freddie Mac guidelines all contain standards or guidelines for verification of an applicant's SS income that, if followed, will help lenders avoid the fair lending pitfall when evaluating the applicant's creditworthiness.

3. CFPB's Ability to Pay/Qualified Mortgage Rule provides in Section I.B.11 of Appendix Q that "Social Security income must be verified by a Social Security Administration benefit verification letter. If any benefits expire within the first full three years of the loan, the income source may not be used in qualifying." Note i. to Section I.B.11 of Appendix Q explains that "[i]f the Social Security Administration benefit verification letter does not indicate a defined expiration date within three years of loan origination, the creditor shall consider the income effective and likely to continue. Pending or current reevaluation of medical eligibility for benefit payments is not considered an indication that the benefit payments are not likely to continue."

4. HUD's current standards for verification of SS income for FHA insured loans are set out in Mortgagee Letter 12-15 (August 17, 2012), which provides that:

- SS income used to qualify the borrower must be verified and likely to continue for at least a three year period from the date of mortgage application.
- To document the continuance of this income, the lender must obtain (i) a copy of the last Notice of Award letter containing a determination on the borrower's eligibility for SS income, or (ii) equivalent document that establishes award benefits to the borrower (equivalent document).
- If there is no defined expiration date in the Notice of Award letter or equivalent document, the lender must "consider the income effective and likely to continue" and must not "request additional documentation from the borrower

to demonstrate continuance of” the SS income. Mortgage Letter 12-15 further provides that “[u]nder no circumstance may lenders inquire into or request documentation concerning the nature of the disability or the medical condition of the borrower” and notes that “[p]ending or current re-evaluation of medical eligibility for benefit payments is not considered an indication that the benefit payment is not likely to continue.”

5. VA’s standards for verification of SS income for VA guaranteed loans are set out in paragraph 4 of Circular 26-12-6 (August 2, 2012, extended by Circular 26-12-6, Change 1, to October 1, 2016), which states: “The Social Security Administration has a program that pays benefits to individuals who cannot work because they have a medical condition that is expected to last at least 1 year. Lenders may use income from this source as qualifying income. It is not necessary to seek a statement from a physician about how long the medical condition will last.”

6. Fannie Mae’s guidelines for verification of SS income for loans eligible for purchase are set out in section B3-3.1-09 of the 2014 Selling Guide, which states: “Social Security income for ... long-term disability that the borrower is drawing from his or her own account/work record will not have a defined expiration date and must be expected to continue.” The Selling Guide also states that “...if Social Security benefits are being paid as a benefit for a family member of the benefit owner, that income may be used in qualifying if the lender obtains documentation that confirms the remaining term is at least three years from the date of the mortgage application.” The Selling Guide sets out the documentation requirements for verify this income as follows: (i) if the borrower is drawing long-term disability income from his or her own account/work record, the lender must obtain either a copy of the Social Security Administrator’s award letter or proof of current receipt and, for SSI, by obtaining both forms of documentation; and (ii) if the borrower is drawing long-term disability income from another person’s account/work record, the lender must obtain (a) a copy of the Social Security Administrator’s award letter, (b) proof of current receipt and (c) proof of three-year continuance (e.g., verification of beneficiary’s age).

7. Freddie Mac’s guidelines for verification of SS income for loans eligible for purchase are set out in section 37.13 of the 2014 Single-Family Seller/Servicer Guide, which provides as follows: (i) SSDI income “may be considered qualifying income that has a reasonable expectation of continuance unless there is a pre-determined ... benefit expiration date that is less than three years ...[;]” (ii) SSI income “may be considered as qualifying income that has a reasonable expectation of continuance unless there is evidence that the benefits will not continue[;]” and (iii) for SSDI and SSI income, “[p]ending or current re-evaluation of medical eligibility for benefit payments is not considered an indication that the ... benefit payment will not continue. Evidence of the source, amount, benefit type and consistent receipt for the most recent two months must be obtained.”

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