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NRMLA 2011 Annual Meeting & Expo

October 24 – 26, 2011

Renaissance Boston Waterfront Hotel

Boston, Massachusetts

Legislative Changes and Regulatory Updates Impacting the Residential Mortgage Industry[i]

Federal Law Updates

State Law Updates

The Dodd-Frank Wall Street Reform and Consumer Protection Act

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which incorporates several separate new laws, including the Mortgage Reform and Anti-Predatory Lending Act (the "Mortgage Reform Act"), which is Title XIV of the Dodd-Frank Act, and the Consumer Financial Protection Act of 2010 (Title X of the Dodd-Frank Act), which creates the new Bureau of Consumer Financial Protection (the "Bureau"). The Dodd-Frank Act also made amendments to the Securities Exchange Act (contained in Title IX of the Act), requiring certain federal agencies to propose and implement risk retention rules for securitizations.

Below is a more detailed summary of some of the most important parts of the Dodd-Frank Act for reverse mortgage lenders. Title XIV of the Act will be of most immediate concern as the Bureau begins to exercise its rulemaking authority. Portions of Title X which creates the Bureau, and describes its authority and priorities also is outlined below. The Bureau will have the ability to seek and obtain incredibly broad relief from lenders on its own behalf as well as on behalf of particular consumers. The Bureau will have a major role in regulating mortgage lending as well as other financial products.

The Mortgage Reform Act (Title XIV)

The Mortgage Reform Act contained in Title XIV of the Act amends the Truth in Lending Act ("TILA") and other consumer protection statutes in myriad ways to add provisions imposing specific standards on residential mortgage loans including limitations on mortgage originator compensation and permissible activities (Subtitle A), to add an ability to repay standard for residential mortgage loans (Subtitle B), to add many additional disclosure for residential mortgage loans (Subtitle B), to add a new definition and new requirements with respect to high cost mortgage loans (Subtitle C), to add a new Office of Housing Counseling in the Department of Housing and Urban Development (Subtitle D), to add new obligations on loan servicers by amendments to TILA and RESPA (Subtitle E), to add new loan appraisal requirements to replace the Home Valuation Code of Conduct (Subtitle F), and to make various other changes.

Although the Act provides for extensive, wide sweeping changes across the industry, it largely defers the parsing out of the details to the federal agencies and primarily to the new Bureau of Consumer Financial Protection ("Bureau"). The Mortgage Reform Act states the provisions under Subtitle A, B, C and E below are "enumerated consumer laws," and as a result, the provisions in those subtitles will fall under the supervision of the new Bureau.

Section 1400 of the Mortgage Reform Act provides that regulations under the various provisions added by the Mortgage Reform Act must be prescribed in final form before the end of the 18 month period beginning on the "designated transfer date." The designated transfer date was set as July 21, 2011.

Regulations issued by the Bureau implementing the changes made by the Mortgage Reform Act must be effective not later than 12 months after they are issued. Presumably, the Bureau could set an effective date for regulations of less than the full twelve months.

The new provisions in the Mortgage Reform Act that require regulatory implementation will be effective on the date the regulations are effective. If regulations are not needed or the regulations are not in place 18 months after the designated transfer date, the provisions in Title XIV requiring rulemaking will generally take effect on that date, which is January 21, 2013.

Subtitle A—Residential Mortgage Loan Origination Standards

The primary focus of Subtitle A is the placing of significant restrictions on two practices prevalent in the mortgage industry: mortgage originator compensation and steering incentives.

Please note, however, that the Federal Reserve Board issued final Loan Originator Compensation Rule under Regulation Z, and those rules (originally slated to become effective on April 1, 2011) became effective for loan applications received by creditors on or after April 6, 2011, due to a temporary stay issued by the U.S. Court of Appeals for the D.C. Circuit and a subsequent appeal that delayed the effective date. Those rules are discussed further below in these Handout materials beginning at page 18.

Mortgage Originator Compensation

The revisions to the federal Truth-in-Lending Act made by the Mortgage Reform Act in the area of mortgage originators is similar to the Loan Originator Compensation Rule implemented by the Federal Reserve Board through changes to Regulation Z, but there are also several differences. [The Federal Reserve Board's Loan Originator Compensation Rule is discussed below in more detail beginning at page 18.] As explained above, these statutory changes to TILA made by the Mortgage Reform Act will not be effective until the earlier of the Bureau finalizes implementing regulations or January 21, 2013.

Like the Loan Originator Compensation Rule, under TILA as revised, a mortgage originator will be able to receive compensation from either the creditor or the consumer – but not both. The mortgage originator cannot receive compensation that varies based upon any term of the loan except for the amount of principal, including an express prohibition on yield-spread premiums. Incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time are expressly permitted. The Act does not limit the amount of compensation received by a creditor upon the sale of a consummated loan to a subsequent purchaser (other than in a table-funded transaction).

However, section 1403 of the Dodd-Frank Act (which amends Section 129B of the Truth in Lending Act (as added by section 1402(a) of the Dodd-Frank Act) provides that for any residential mortgage loan, no mortgage originator shall receive from any person and no person shall pay to a mortgage originator, directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of the principal).

Further, for any mortgage loan, a mortgage originator may not receive from any person other than the consumer and no person, other than the consumer, who knows or has reason to know that a consumer has directly compensated or will directly compensate a mortgage originator, may pay a mortgage originator any origination fee or charge except bona fide third party charges not retained by the creditor, mortgage originator, or an affiliate of the creditor or mortgage originator. This provision of the Dodd-Frank Act effectively codifies the "dual compensation" prohibition provided under the Federal Reserve Board's Loan Originator Compensation Rule, discussed below.

Notwithstanding the foregoing, a mortgage originator may receive from a person other than the consumer an origination fee or charge, and a person other than the consumer may pay a mortgage originator an origination fee or charge, if: (i) the mortgage originator does not receive any compensation directly from the consumer; and (ii) the consumer does not make an upfront payment of discount points, origination points, or fees, however denominated (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or originator), except that the Board may, by rule, waive or provide exemptions to this clause if the Board determines that such waiver or exemption is in the interest of consumers and in the public interest. This provision of the Dodd-Frank Act effectively would preclude lender paid loan originator fees if the borrower pays the lender points. This is a change from the Federal Reserve Board's Loan Originator Compensation Rule, discussed below, however the Bureau has authority under the Dodd-Frank Act to amend

this provision by regulation.

Steering Prohibitions

Future regulations will prohibit mortgage originators from steering any consumer to a residential mortgage loan that: (a) the consumer lacks a reasonable ability to repay; or (b) has predatory characteristics such as equity stripping, excessive fees or abusive terms. Unlike the Federal Reserve Board's Loan Originator Compensation Rule, this provision of the Dodd-Frank Act is broad enough to cover conduct of mortgage originators employed by creditors when such creditors are acting as creditors (as opposed to merely brokering a loan).

The Bureau is required to prescribe regulations prohibiting mortgage originators from steering any consumer away from a qualified loan to a loan that is not a qualified loan. See the discussion below for a definition of a qualified loan.

Key Definitions

The definition of "mortgage originator" is much broader than under the S.A.F.E. Act and many state law definitions. A mortgage originator is any person (e.g. individuals or entities) who, for or in the expectation of direct or indirect compensation or gain, (a) takes a residential mortgage loan application; (b) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or (c) offers or negotiates terms of a residential mortgage loan. A person "assists a consumer in obtaining or applying to obtain a residential mortgage loan" by, among other things, advising on residential mortgage loan terms (including rates, fees and other costs), preparing residential mortgage loan packages or collecting information on behalf of the consumer with regard to a residential mortgage loan.

However, individuals who perform purely administrative or clerical tasks on behalf of a mortgage originator are expressly exempt from the mortgage originator requirements.

Other Notable Exemptions

Servicers (as defined under RESPA) and servicer employees, agents and contractors are exempt, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind. Licensed real estate brokers not compensated by a mortgage lender, mortgage broker or mortgage originator are also exempt.

Additional Requirements

TILA is modified to require mortgage originators to be qualified and (when required) registered and licensed as a mortgage originator under applicable State or Federal law. Additionally, a mortgage originator must include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry (NMLS).

Regulatory Authority

The Bureau has broad discretionary authority to regulate terms, acts or practices relating to residential mortgage loans that the Bureau finds to be abusive, unfair, deceptive, predatory, necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA, necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections or are not in the interest of the borrower. The Bureau's

regulations will, at a minimum, prohibit a mortgage originator from:

(a) Engaging in abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender or age;

(b) Mischaracterizing the credit history of a consumer or the residential mortgage loans available to a consumer; or

(c) Mischaracterizing or suborning the mischaracterization of the appraised value of the property securing the extension of credit.

Subtitle B: Minimum Standards for Mortgages

Because of the many detailed provision is this Subtitle and certain of the other subtitles to the Mortgage Reform Act, we present certain subtitles in a Section by Section description of the new provisions. We have omitted some few sections which are of lesser interest to reverse mortgage lenders.

Section 1411 Ability to Repay

This section adds a new provision to TILA to create a new "ability to repay" standard for residential mortgage loans. There is significant complexity, and implementation will benefit from the regulations to be written.

Reasonable Ability to Repay

New Section 129C of TILA provides that a creditor may not make a "residential mortgage loan" unless the creditor makes a reasonable and good faith determination that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms.

Exemptions

The statute specifically exempts from the ability to repay requirements reverse mortgage and bridge loans with a term of 12 months or less, including a purchase loan of a new dwelling where the consumer plans to sell a different dwelling within 12 months.

Section 1412 Safe Harbor and Rebuttable Presumption

Despite its title, this section does not create any safe harbor for lenders seeking to meet the Ability to Repay Standard described above. It does attempt to create a class of loans called "qualified mortgages" that qualify for a rebuttable presumption that the loan meets the standard. Note, however, that the definition of qualified mortgage is used for other purposes such as the limitations on prepayment penalties discussed below.

Qualified Mortgage Defined. A qualified mortgage is any residential mortgage loan that meets the following standards:

a. Except for certain balloon loans describe below, the regular periodic payments on the loan may not result in an increase in the principal balance or allow the consumer to defer repayment of any principal.

b. Except for certain balloon loans as described below, the loan cannot provide for any payment that is twice as large as the average of earlier scheduled payments.

c. The income and financial resources relied upon to qualify the consumers are verified and documented.

d. For fixed rate loans, the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments.

e. For variable rate loans, the underwriting is based on the maximum rate permitted under the loan during the first five years of the loan and a payment schedule that fully amortizes the loan over the loan term and takes into account applicable taxes, insurance and assessments.

f. The loan meets debt to income ratios established by the Bureau or alternative measures of ability to pay established by the Bureau.

g. Total points and fees for the loan do not exceed 3% of the loan amount. See Section 1431 below, for a discussion of the new definition of points and fees.

Qualified Mortgage Definition and Reverse Mortgages. In the case of a reverse mortgage (except for the purposes of subsection (a) of section 129C as revised (i.e., the ability to repay requirements) to the extent that such mortgages are exempt altogether from those requirements), 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 the requirements for qualified mortgages. As discussed below, these rules have been proposed by the Federal Reserve board but have yet to be adopted by the Consumer Financial Protection Bureau (hereinafter "the CFPB" or "the Bureau").

Bureau Regulations. The Bureau will have authority to revise, add to, or subtract from the criteria for determining what constitutes a qualified mortgage, upon a finding that the regulations are necessary and proper, to (1) ensure that responsible, affordable credit remains available to consumers; (2) to effectuate the purposes of the ability to repay standard and the provisions regarding loan originator compensation; or (3) to prevent evasion or circumvention of the requirements.

Agency Definitions. In addition to the exemption from the requirements for the ability to repay standard for certain refinancings described above, the Department of Housing, Department of Veterans Affairs, the Department of Agriculture and the Rural Housing Service may, after consultation with the Bureau, define the loans that they insure, guarantee or administer that are "qualified mortgages." The rules may revise, add to, or subtract from the qualified mortgage criteria. The agencies must make a finding that the rules are consistent with the purposes of the rules on qualified mortgages, prevent circumvention or evasion of the rules or facilitate compliance with the rules.

Ability to Repay (Qualified Mortgage) Proposed Regulations.

On May 11, 2001, the Federal Reserve Board issued proposed Ability to Repay regulations (Ability to Repay/Qualified Mortgage or "ATR-QM"). Pursuant to the Dodd-Frank Act, authority for finalizing the proposed ATR-QM Rule transferred to the Bureau on July 21, 2011. Comments on the proposed ATR-QM Rule were due by July 22, 2011. NRMLA commented on the proposed ATR-QM rule as described below.

In the proposed ATR-QM Rule, the Board stated that, although TILA Section 129C(b) (as added by the Dodd-Frank Act) does not specifically exempt reverse mortgages 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. Accordingly, proposed § 226.43(a)(3) provides that reverse mortgages are not subject to the alternative requirements for qualified mortgages and balloon-payment qualified mortgages, under proposed ATR-QM Rule.

Thus, the ATR-QM Proposed Rule does not establish special conditions for reverse mortgages to be qualified mortgages. Because a "Qualified Residential Mortgage" as defined under the Agencies Proposed Risk Retention Rule, as discussed below, NRMLA commented that the Board (and subsequently the Bureau) should define a "qualified reverse mortgage" so that some reverse mortgages could qualify for reduced risk retention requirements and thus facilitate the quicker return of the proprietary reverse securitization market. [See Discussion of the Risk Retention Rule below at page 28.]

NRMLA requested 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, and
- Carries no prepayment penalty.

Regarding the financial assessment prong of the above requested proposed definition of a "qualified reverse mortgage", we understand that HUD currently is 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 or next.

Section 1413 Defense to Foreclosure

This section provides that a borrower can assert a violation of the limitations on steering and loan officer compensation or the ability to repay standard at any time as a defense by recoupment from the creditor in response to a collection action or a foreclosure. There is no time limit on the period for which the borrower can assert these violations in this type of action.

Section 1416 Amendments to Civil Liability Provisions

Civil Liability under Truth in Lending. This section amends the civil liability provisions of TILA and extends the statute of limitations for certain violations to 3 years.

For consumer leases, the minimum statutory damages award is increased from $100 to $200 and the maximum is increased from $1000 to $2000, to be consistent with credit transactions. Of more significance for lenders, the maximum statutory damages award in class actions is increased from $500,000 to $1,000,000. The statutory damages are awarded in addition to actual damages and attorney's fees.

Of most significance to residential mortgage lenders, the violations of the steering and loan originator compensation provisions and the ability to repay provisions added by this statute will carry additional statutory damages equal to the sum of all finance charges and fees paid unless the lender can demonstrate that the violation was not material.

Most actions for a violation of TILA must be brought within one year of the date of the violation. This bill would extend this time period to three years for violations related to Section 32 loans (HOEPA loans), violations related to the new provisions on steering and loan officer compensation and violations related to the new ability to repay standard.

Section 1419 Required Disclosures

This section provides for new items of information that must be included in closed-end loan Truth in Lending disclosures.

New Truth in Lending Disclosures. For residential mortgage loans with a variable rate and for which an escrow or impound account is established for payment of taxes and insurance, the lender must disclose the following:

• The amount of the initial monthly payment of principal and interest and the amount of such payment including the amount to be deposited in escrow.

• The amount of the fully indexed monthly payment and the amount of the fully indexed payment which includes the amount to be deposited in escrow.

For all residential mortgage loans, the following new disclosures are required:

• Aggregate amount of settlement charges for all settlement services to be provided in connection with the loan;

• The amount of the charges that are included in the loan;

• The amount of the charges that the borrower must pay at closing;

• The approximate “wholesale rate of funds” in connection with the loan;

• The aggregate amount of other fees or required payments in connection with the loan;

• The aggregate amount of fees paid to the loan originator, including the amount paid directly by the consumer and any additional amounts paid by the creditor;

• The amount of interest that the consumer will pay over the life of the loan stated as a percentage of the loan amount.

Section 1420 Disclosures Required in Monthly Statements for Residential Mortgage Loans

Billing Statements for Variable Rate Loans. This section will do away with coupon billing for residential mortgage loans with variable rates and require monthly billing statements. The billing statements must include the following:

• The amount of the principal obligation under the loan;

• The current interest rate in effect for the loan;

• The date on which the interest rate may next adjust or reset;

• The amount of any prepayment penalty fee to be charged, if any;

• A description of any late payment penalty fees;

• A telephone number and email address that may be used to obtain information regarding the loan;

• The names, addresses, telephone numbers and internet addresses of HUD or State housing authority approved counseling agencies reasonably available to the consumers; and

• Additional information that the Bureau may require.

For fixed rate loans, this information, as applicable, must be provided in a coupon book if monthly statements are not provided.

The Bureau is to develop standard forms for this disclosure requirement.

Subtitle E—Mortgage Servicing

Section 1463 Real Estate Settlement Procedures Act of 1974 Amendments

This section makes several changes to RESPA.

Force Placed Insurance. This amendment will impose requirements on servicers of federally related mortgage loans with respect to force placed insurance.

The servicer may not obtain force placed insurance unless there is a "reasonable basis" to believe the borrower has failed to comply with the loan contract requirements. The servicer will not be deemed to have a reasonable basis unless the servicer complies with the following:

• The servicer has sent a notice by first class mail containing a reminder of the borrower's obligation to maintain insurance; a statement that the servicer does not have evidence of the insurance; a clear and conspicuous statement of the procedures by which the borrower can demonstrate that the borrower has insurance coverage; and a statement that the servicer may obtain coverage at the borrower's expense if the borrower does not demonstrate coverage in a timely manner;

• The servicer has sent a second notice at least 30 days after the first notice with all of the same information; and

• The servicer has not received any demonstration of insurance coverage by the end of the 15 day period beginning on the date the second notice was sent.

A demonstration of insurance coverage shall include the existing policy number along with the identity of, and contact information for, the insurance company or agent.

Within 15 days of receiving confirmation of existing insurance coverage, the servicer must terminate any force placed insurance and refund any premiums paid for the force placed insurance during the period the borrower's insurance was in effect.

All charges for force placed insurance must be "bona fide and reasonable."

Additional Prohibitions for Servicers. RESPA is amended to prohibit the following:

• Charging fees for responding to qualified written requests;

• Failing to take timely action to correct errors relating to payment allocations, final balances for purposes of a payoff or avoiding foreclosure, or other servicer duties;

• Failing to respond in 10 business days to a request for identity and contact information for the owner or assignee of the loan;

• Failing to comply with other obligations as established by the Bureau by regulation.

Qualified Written Requests. The time limits for responding to qualified written requests have been reduced. The initial response will now be due in 5 days (reduced from 20) and final resolution will be due in 30 days (reduced from 60). The servicer can take an additional 15 days to provide the final response if the servicer provides a notice to the borrower of the need for the extension and the reason it is needed.

Increased Penalties. The penalties are increased for certain violations of RESPA from $1,000 to $2,000 per violation and $500,000 to $1 million for class actions. These penalties relate to the RESPA provisions related to notices with respect to transfer of servicing, the administration of escrow accounts, the handling of qualified written requests and the new provisions added by this Section 1463.

Subtitle F—Appraisal Activities

Subtitle F of the Mortgage Reform Act (Title XIV of the Act) addresses appraisal activities, including imposing a requirement on lenders to use only appraisals provided by certified or licensed appraisers in connection with higher-risk mortgages and imposing independence and disclosure requirements in connection with all appraisals. Significantly, the provisions abolish the Home Valuation Code of Conduct ("HVCC"), effective on the date the interim final regulations are promulgated under the newly enacted section 129E of TILA (as created by § 1472 of the Dodd-Frank Act).

Section 1472(g)(2) of the Mortgage Reform Act required the Federal Reserve Board to prescribe interim final regulations no later than 90 days after the date of enactment of section 1472 defining with specificity acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations.

The Board, on October 28, 2010, published an interim final rule pursuant to its mandate under the Dodd-Frank Act to implement the appraisal independence provisions added to the Truth-in-Lending Act. The Interim Rule replaces the Home Valuation Code of Conduct, which Dodd-Frank set for expiration on the date the Interim Rule issued. The Board solicited comments on the Interim Rule generally and on a variety of specific issues. The Rule had an interim effective date of December 27, 2010, comments were due on or before December 27, 2010 and compliance with the Interim Rule became mandatory on April 1, 2011.

Scope of the Board's Interim Appraisal Rule

Both open-end and closed-end loans secured by a consumer's principal dwelling are subject to the Interim Rule. A creditor or any person that provides "settlement services" (as defined under RESPA) is subject to the Interim Rule as a "covered person." The consumer in a transaction, a person secondarily liable for the transaction (*e.g.*, guarantor), and a person residing in a dwelling are not covered persons.

Appraisal Valuation

The appraisal valuation provisions in the Interim Rule addresses coercion of appraisers and value mischaracterization, largely copying the requirements lenders are familiar with from either the HVCC or the current Regulation Z provisions. However, unlike HVCC which focused primarily on a creditor's improper influence on an appraiser, these provisions also impose liability on persons other than the creditor (see "Scope" above) and expressly prohibit an appraiser from misrepresenting the value of a property.

A covered person must not directly or indirectly cause, or attempt to cause, the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations, through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions. The Board provides the following examples of conduct that would violate the coercion restrictions:

(a) Seeking to influence a person that prepares a valuation to report a minimum or maximum value for the consumer's principal dwelling;
(b) Withholding or threatening to withhold timely payment to a person that prepares a valuation or performs valuation management functions because the person does not value the consumer's principal dwelling at or above a certain amount;
(c) Implying to a person that prepares valuations that current or future retention of the person depends on the amount at which the person estimates the value of the consumer's principal dwelling;
(d) Excluding a person that prepares a valuation from consideration for future engagement because the person reports a value for the consumer's principal dwelling that does not meet or exceed a predetermined threshold; and
(e) Conditioning the compensation paid to a person that prepares a valuation on consummation of the covered transaction.

Additionally, the Interim Rule places the following restrictions on appraisal mischaracterizations:

(a) A person that prepares valuations may not materially misrepresent the value of the consumer's principal dwelling in a valuation;
(b) A covered person may not falsify and a covered person other than a person that prepares valuations may not materially alter a valuation; and
(c) A covered person may not induce a person to violate (a) or (b).

The Interim Rule also provides examples of actions that do <u>not</u> violate the prohibition on coercion or mischaracterization of value provisions:

(a) Asking a person that prepares a valuation to consider additional, appropriate property information, including information about comparable properties, to make or support a valuation;
(b) Requesting that a person that prepares a valuation provide further detail, substantiation, or explanation for the person's conclusion about the value of the consumer's principal dwelling;
(c) Asking a person that prepares a valuation to correct errors in the valuation;
(d) Obtaining multiple valuations for the consumer's principal dwelling to select the most reliable valuation;
(e) Withholding compensation due to breach of contract or substandard performance of services; and
(f) Taking action permitted or required by applicable federal or state statute, regulation, or agency guidance.

Conflicts of Interest

The Interim Rule also includes conflict of interest restrictions that closely follow the HVCC. No person preparing a valuation or performing valuation management functions for a covered transaction may have a direct or indirect interest in the property or transaction for which the valuation is or will be performed.

The Interim Rule also sets forth safe harbors for employees and affiliates of the creditor, as well as those providing other settlement services in addition to valuation-related services. For creditors with assets exceeding $250 million, the safe harbor requires that:

(a) The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation;
(b) The person preparing a valuation or performing valuation management functions reports to a person who is not part of the creditor's loan production function and whose compensation is not based on the closing of the transaction to which the valuation relates; and
(c) No employee, officer, or director in the creditor's loan production function is directly or indirectly involved in selecting, retaining, recommending, or influencing the selection of the person to prepare a valuation or perform valuation management functions, or to be included in or excluded from a list of approved persons who prepare valuations or perform valuation management functions.

The term "loan production function" means an employee, officer, director, department, division, or other unit of a creditor with responsibility for generating covered transactions, approving covered transactions, or both.

For creditors with assets of $250 million or less, the safe harbor requires that:

(a) The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation; and
(b) The creditor requires that any employee, officer or director of the creditor who orders, performs, or reviews a valuation for a covered transaction abstain from participating in any decision to approve, not approve, or set the terms of that transaction.

A creditor that knows, at or before closing, of a violation of the appraisal valuation and independence standards or the conflict of interests restrictions must not extend credit based on the valuation, unless the creditor documents that it has acted with reasonable diligence to determine that the valuation does not materially misstate or misrepresent the value of the dwelling. To "materially misstate or misrepresent" means the valuation contains a misstatement or misrepresentation that affects the credit decision or the terms on which credit is extended.

Customary and Reasonable Fees

The Interim Rule also requires that a creditor pay fee appraisers for performing appraisal services at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the property being appraised. These requirements apply only to a creditor's or its agent's payment for an appraisal by non-employee, state-licensed or state-certified appraisers, or companies that employ such appraisers. Appraisal management companies subject to the requirements of, or required to register under, FIRREA, as amended by Dodd-Frank, are not "fee appraisers."

The Interim Rule sets forth two ways in which a creditor may be presumed to comply with the customary and reasonable fee requirements. First, a creditor and its agents may:

(a) Compensate the fee appraiser in an amount that is reasonably related to recent rates paid for comparable appraisal services performed in the geographic market of the property being appraised; ***and***
(b) Do not engage in any anticompetitive acts in violation of state or federal law that affect the compensation paid to fee appraisers.

Alternatively, the creditor may be presumed to comply if the creditor and its agents determine the amount of compensation paid to the fee appraiser by relying on information about rates that:

(a) Is based on objective third-party information, including fee schedules, studies, and surveys prepared by independent third parties;
(b) Is based on recent rates paid to a representative sample of providers of appraisal services in the geographic market of the property being appraised or the fee schedules of those providers; ***and***
(c) In the case of information based on fee schedules, studies, and surveys, such fee schedules, studies, or surveys, or the information derived therefrom, excludes compensation paid to fee appraisers for appraisals ordered by AMCs.

Mandatory Reporting

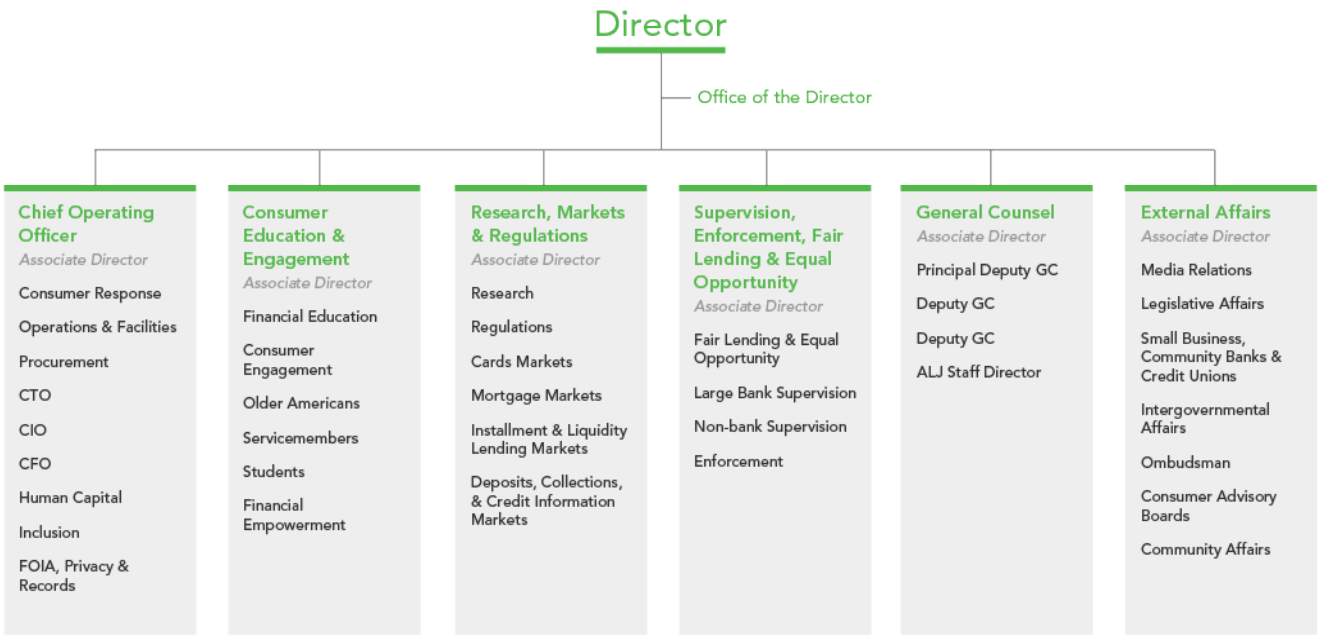
Finally, the Interim Rule includes a mandatory reporting requirement of certain material violations of its provisions. Specifically, any covered person that reasonably believes an appraiser has not complied with the Uniform Standards of Professional Appraisal Practice or ethical or professional requirements for appraisers under applicable state or federal statutes or regulations must refer the matter to the appropriate state agency if the failure to comply is material. A failure to comply is material if it is likely to significantly affect the value assigned to the principal dwelling. Such reporting must occur within a reasonable period of time after the person determines that there is a reasonable basis to believe that a failure to comply has occurred.

Again, the Interim Rule became effective December 27, 2010. Compliance became mandatory on April 1, 2011. Compliance with the new rules will be deemed compliance with the current Regulation Z provisions. Fannie Mae and Freddie Mac also issued Appraisal Independence Requirements that replace the HVCC, as of October 15, 2010.

Bureau of Consumer Financial Protection (Title X)

Title X of the Dodd-Frank Act creates a Bureau of Consumer Financial Protection (the "Bureau") as an independent entity within the Federal Reserve System ("Federal Reserve"), to regulate the offering and provision of consumer financial products or services under federal consumer protection laws. The Bureau's expansive power to make and revise rules on a panoply of subjects, as well as its unprecedented enforcement authority, mean that all financial services companies will be impacted by the changes brought on by this statute.

Below is an organizational chart of the CFPB.



Authority and Purpose. The Act states that markets should be "fair, transparent, and competitive," and directs the Bureau to ensure that: 1) consumers are provided with timely and understandable information to make responsible decisions; 2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; 3) outdated, unnecessary and unduly burdensome regulations are identified and eliminated; 4) federal consumer financial law is enforced consistently to promote fair competition; and 5) markets operate transparently and efficiently to promote both access and innovation. In light of these provisions, the Bureau is likely to take an aggressive position on fair lending and access to credit, which, based upon previously announced administration policy, will probably include enforcement based upon the so-called disparate impact theory.

The Bureau will have rulemaking and enforcement authority under federal consumer protection laws with respect to persons offering or providing financial products or services to consumers, assuming most non-supervisory consumer protection authority over depository institutions from all agencies except for the Federal Trade Commission, and exercising supervisory authority with respect to consumer protection over depository financial institutions with more than $10 billion in assets. Prudential regulators will retain primary consumer protection enforcement authority over depository financial institutions with less than $10 billion in assets. Prudential regulation of all depository financial institutions will remain with the prudential regulators, except that the Office of Thrift Supervision has been abolished and its functions and employees incorporated into the Office of the Comptroller of the Currency. Among the laws for which the Bureau will assume responsibility, all of HUD's consumer protection functions under RESPA, the S.A.F.E. Act, and the Interstate Land Sales Full Disclosure Act will be transferred to the Bureau. In addition, the Bureau will have primary rulemaking authority for TILA, FCRA, FDCPA, and other major consumer laws. The Bureau will publish a list of the existing rules and orders that it will enforce in the Federal Register before the designated transfer date.

Title X makes it unlawful to engage in any unfair, deceptive or abusive act or practice with respect to the offering or provision of consumer financial products or services, and gives the Bureau broad authority to interpret these

terms by regulation. This has the effect of giving the Bureau its own federal trade commission act to interpret and enforce, as well as expanding the Federal Trade Commission Act ("FTCA")'s prohibitions beyond the jurisdictional requirements of the FTCA (which are relaxed under the Act for the FTC as well). Additionally, the Act makes it unlawful for any person (including people otherwise not covered by the Act) to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the Act.

Beyond this very broad authority to prescribe rules to implement the Act, the Bureau is instructed to study a broad array of issues, from reverse mortgages to mandatory arbitration clauses, and to report on many of these issues to Congress at various times over the next one to three years, and is varyingly required or authorized to propound rules regarding many of them. The Bureau is further required periodically to review essentially all regulations under federal consumer law regarding financial products and services, propounding changes as needed. The combined effect of all of this rulemaking, studying, reporting and recommending, will be a volume of regulatory activity without precedent since the New Deal, affecting almost every aspect of the markets for consumer financial products and services. Companies and trade organizations, and their attorneys, will have to be prepared to monitor and submit comments with respect to multiple simultaneous studies and regulations, covering everything from all aspects of long-established regulatory regimes to proposals for entirely new fields of regulation.

In addition to the existing enforcement mechanisms in each of the enumerated consumer laws, the Bureau is given extremely broad enforcement powers. The Bureau may commence both administrative proceedings and civil suits. The Bureau can go to court in its own name, using its own attorneys, and ask the court to order rescission or reformation of contracts, refund of moneys or return of real property, restitution, disgorgement, compensation for unjust enrichment, damages, public notification of violations with costs to be borne by the violator, limits on activities or functions, and civil money penalties of up to $1 million per day. The Bureau may not seek punitive damages, however, and settlements must be approved by the court. Additionally, even companies not subject to the Bureau's jurisdiction under the Act may have to submit information to the Bureau to establish that, in fact, they are not subject to its jurisdiction.

Preemption. Title X limits federal preemption of state consumer laws, which will only be preempted if they discriminate against national banks, if they permit lower standards than federal law requires, or if they prohibit alternative mortgage transactions. Moreover, state attorneys general will have the authority to enforce certain consumer law provisions in court, as parens patriae for consumers in their states, including seeking damages on behalf of individual consumers.

Effective Date. The Bureau was created as of the enactment of the statute. Until a Director is confirmed by the Senate, the Secretary of the Treasury will exercise the Director's powers. The transfer of rulemaking, supervisory and enforcement authority will take place on a "designated transfer date," which was announced to be July 21, 2011.

Additionally, the Act provides a broad range of effective dates and timetables for regulatory changes and reports, ranging from immediate to several years in the future. We will be providing updates, including detailed regulatory analysis, as key dates approach.

Formal Studies. Under Title X, the Bureau and certain other agencies have been tasked with conducting formal studies and/or proposing new rules on a broad range of topics, including a **study of reverse mortgages that may result in the issuance of regulations. The Bureau may prescribe an integrated disclosure form, and may issue regulations before completing the study.**

Transfer of Rulemaking Authority

The Bureau will take over rulemaking authority for the following "enumerated consumer laws":

• Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. § 3801 et seq.);

• Consumer Leasing Act of 1976 (15 U.S.C. § 1667 et seq.);

• Electronic Fund Transfer Act (15 U.S.C. § 1693 et seq.), except with respect to section 920 of that Act;

• Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.);

• Fair Credit Billing Act (15 U.S.C. § 1666 et seq.);

• Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. §§ 1681m(e), 1681w);

• Home Owners Protection Act of 1998 (12 U.S.C. § 4901 et seq.);

• Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.);

• Subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. § 1831t(c)–(f));

• Sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6802–6809), except for section 505 as it applies to section 501(b);

• Home Mortgage Disclosure Act of 1975 (12 U.S.C. § 2801 et seq.);

• Home Ownership and Equity Protection Act of 1994 (15 U.S.C. § 1601 note);

• Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2601 et seq.);

• S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. § 5101 et seq.);

• Truth in Lending Act (15 U.S.C. § 1601 et seq.);

• Truth in Savings Act (12 U.S.C. § 4301 et seq.);

• Section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8);

• Interstate Land Sales Full Disclosure Act (15 U.S.C. § 1701); and

• Large portions of the Mortgage Reform and Anti-Predatory Lending Act, which is Title XIV of the Act, are also designated as enumerated consumer laws, under the purview of the Bureau.

The Bureau has the authority to exempt most classes of covered persons by rule, whether in whole or in part. It may also prescribe rules regarding registration requirements for non-depository covered persons and may publicly disclose the registration information.

The Dodd-Frank Act also provides a mechanism for the states to force the Bureau to engage in a rulemaking. When a majority of states has enacted a resolution in support of the establishment or modification of a consumer protection regulation, the Bureau shall issue a notice of proposed rulemaking.

Enforcement Key Points

The Bureau may conduct hearings and adjudication proceedings in order to enforce both Title X and the other laws that it enforces.

Civil penalties are available in three tiers. The first tier, for all violations, is up to $5,000 per day of the violation; the second tier, for reckless violations, is up to $25,000 per day; and the third tier, for knowing violations, is up to $1 million per day.

The Bureau can seek an extremely broad array of relief, including rescission or reformation of contracts, refund of moneys or return of real property, restitution, disgorgement, compensation for unjust enrichment, damages, public notification of violations with costs to be borne by the violator, limits on activities or functions, and civil money penalties.

The Bureau and the FTC will negotiate a coordination agreement. When the FTC or the Bureau has initiated an enforcement action, the other can intervene but can't initiate a separate action. The Bureau can issue subpoenas and go to court to enforce them. The Bureau can issue civil investigative demands, which may require written or oral answers as well as documents. Each civil investigative demand must state the nature of the conduct constituting the alleged violation and the applicable provision of law. The Bureau can grant immunity in order to compel answers.

The statute of limitations for violations under Title X is 3 years, but the statutes of limitations for other statutes will continue to apply to claims under those statutes. The Bureau is required to pass along evidence regarding the commission of any crime, or failure to pay federal taxes, to the appropriate authorities.

Additional Information Gathering

ECOA is amended to require financial institutions to track whether an applicant for credit is a women-owned, minority-owned, or small business. The information is to be reported and made available to the public, similar to HMDA data.

HMDA will now require collection and reporting of data on:

• The age of the applicant;

• Points and fees;

• APR spread;

• Term of prepayment penalty;

• Value of real property to be pledged;

• Term of introductory rate;

• Presence of terms permitting payments other than fully amortizing payments;

• Term of loan;

• Channel through which application was made; and

• If the Bureau decides to require them by rule, unique identifiers for originator, loan, and property parcel, as well as applicants' credit score.

Offices Established within the Bureau

Within the Bureau, there is to be established several Offices, including the Office of Fair Lending and Equal Opportunity, the Office of Financial Education, the Office of Service Member Affairs, and, **most importantly for the reverse mortgage industry, the Office of Financial Protection For Older Americans**.

Within the 180-day period beginning on the designated transfer date (i.e., July 21, 2011), the Director of the Bureau must establish the Office of Financial Protection for Older Americans (the "OFPOA"). Thus, the OFPOA must be established by January 2012. The functions of the OFPOA shall include activities designed to facilitate the financial literacy of individuals who have attained the age of 62 years or more (referred to as ''seniors'') on protection from unfair, deceptive, and abusive practices and on current and future financial choices, including through the dissemination of materials to seniors on such topics.

The OFPOA shall be headed by an assistant director. The OFPOA shall:

(A) develop goals for programs that provide seniors financial literacy and counseling, including programs that—

(i) help seniors recognize warning signs of unfair, deceptive, or abusive practices, protect themselves from such practices;

(ii) provide one-on-one financial counseling on issues including long-term savings and later-life economic security; and

(iii) provide personal consumer credit advocacy to respond to consumer problems caused by unfair, deceptive, or abusive practices;

(B) monitor certifications or designations of financial advisors who advise seniors and alert the FTC and State regulators of certifications or designations that are identified as unfair, deceptive, or abusive;

(C) not later than 18 months after the date of the establishment of the Office (thus, by July 2013), submit to Congress and the FTC any legislative and regulatory recommendations on the best practices for—

(i) disseminating information regarding the legitimacy of certifications of financial advisers who advise seniors;

(ii) methods in which a senior can identify the financial advisor most appropriate for the senior's needs; and

(iii) methods in which a senior can verify a financial advisor's credentials;

(D) conduct research to identify best practices and effective methods, tools, technology and strategies to educate and counsel seniors about personal finance management with a focus on—

(i) protecting themselves from unfair, deceptive, and abusive practices;

(ii) long-term savings; and

(iii) planning for retirement and long-term care;

(E) coordinate consumer protection efforts of seniors with other Federal agencies and State regulators, as appropriate, to promote consistent, effective, and efficient enforcement; and

(F) work with community organizations, non-profit organizations, and other entities that are involved with educating or assisting seniors (including the National Education and Resource Center on Women and Retirement Planning).

Revisions to Regulation Z

Federal Reserve Issues Final Rules Regarding Loan Originator Compensation Practices

On August 16, 2010, the Federal Reserve announced final rules regarding loan originator compensation practices. On September 24, 2010, the final rules were published in the Federal Register. The stated goals of the new rules are to protect mortgage borrowers from unfair, abusive, or deceptive lending practices and to help ensure that consumers can choose from loan options that include the lowest interest rate and lowest amount of points and origination fees. The new rules apply to mortgage brokers and the companies that employ them, as well as mortgage loan officers employed by depository institutions and other lenders who originate mortgage loans covered by Regulation Z. These new rules also apply to all closed-end consumer credit transactions secured by a dwelling regardless of price or lien position. Further, the dwelling need not be the consumer's principal dwelling.

These final rules prohibit a loan originator from:

- receiving compensation that is based on the interest rate or other loan terms (other than the loan amount);
- receiving compensation from the lender or another party if the loan originator is receiving compensation directly from the consumer; and
- directing or "steering" a consumer to accept a mortgage loan that is not in the consumer's interest in order to increase the loan originator's compensation.

The Federal Reserve, under its authority to prohibit unfair or deceptive acts or practices, found that paying a loan originator based on the terms or conditions of the loan, other than the amount of credit extended, or steering consumers to loans that are not in their interest to maximize loan originator compensation are unfair practices. The Federal Reserve also found that disclosure could not remedy these practices. The Federal Reserve concluded that these practices cause substantial injury to consumers, which consumers cannot reasonably avoid, and that the injuries are not outweighed by the benefits to either consumers or to competition in the marketplace. The focus of the analysis of injury sustained by consumers was yield spread premiums.

Therefore, these final rules effectively eliminate the use of a yield spread premium as a way for a lender to pay a mortgage broker compensation that is based on the interest rate at which the broker delivers the loan to the lender. However, the final rules permit compensation to be based on a percentage of the loan amount and afford creditors some flexibility in loan pricing, such that they can preserve the consumer benefits of compensating a loan originator, or paying for all or part of the closing costs, through the interest rate (so long as any creditor-paid compensation retained by the loan originator is not based on the loan terms or conditions).

The final rules note that the permissibility of compensation based on the loan amount may, in the future, be subject to a minimum or maximum dollar amount.

Moreover, as proposed, the final rule defines a "loan originator" to include both persons who are covered by the current definition of a "mortgage broker," as well as those employees of a creditor who are not otherwise already considered to be "mortgage brokers." The final rule also defines a loan originator as covering both a natural person and a mortgage broker company, including those mortgage broker companies that close a loan in their name, but use table-funding from a third party to fund the loan. However, a creditor that funds a transaction out of its own funds is excluded from the definition of a loan originator. Thus, secondary market gain on sale compensation is not subject to the rule.

As the Federal Reserve is well aware, these rules and the definition of "loan originator" will have a significant impact on smaller firms, such as small mortgage broker companies, and extend to community banks and credit unions acting as mortgage brokers in particular transactions. However, like the provisions of the Dodd-Frank Act, the definition and final rules do not address secondary market transactions between creditors and secondary market investors. The rules also do not consider mortgage servicers as "loan originators," where the servicer is modifying an existing loan on behalf of the current owner of the loan.

As stated above, the final rules apply to all closed-end consumer credit transactions secured by a dwelling, regardless of price or lien position, in order to be consistent with the definition of "residential mortgage loan," as defined in the Dodd-Frank Act. The dwelling need not be the consumer's principal dwelling.

While the rules do not apply to open end credit (i.e., HELOCs), timeshare transactions, or loans secured by real property that do not include a dwelling, the Federal Reserve will consider whether broader coverage is necessary in a future rulemaking.

New Federal Reserve Staff commentary indicates examples of those things determined not to be "terms or conditions" of the loan, as well as examples of permissible compensation practices. For example, the staff commentary clarifies that credit scores or similar indicators of credit risk, such as the debt-to-income ratio, are not terms or conditions of the loan. However, staff commentary provides that these items may act as a "proxy" for a terms or conditions of the loan (through, for instance, risk based pricing), and thus may not be utilized when setting loan originator compensation. Staff commentary also clarifies that a payment that is fixed in advance for each originated loan and compensation that accounts for a loan originator's fixed overhead costs are permissible compensation methods.

These final rules permit creditors to compensate their loan officers differently than mortgage brokers. It is also permissible to compensate loan originators based on loan volume, whether by the total dollar amount of credit extended or the total number of loans originated over a given time period. However, such compensation adjustments must only be made prospectively. These compensation programs may also be periodically reviewed by the creditor to determine if loan originator compensation should be revised. However, the Rule does not permit compensation to be paid by both the consumer and another source.

Finally, loan originators are prohibited from directing or ''steering'' a consumer to consummate a dwelling-secured loan based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest. The Federal Reserve intended to preserve consumer choice by ensuring that consumers have loan options that reflect considerations other than the maximum amount of compensation that will be paid to the originator.

Therefore, the Federal Reserve created a safe harbor where a loan originator is deemed to have complied with these anti-steering rules if the loan originator satisfies the following three requirements:

1. For each type of transaction in which the consumer expresses an interest, the consumer must be presented with, and able to choose from, loan options that include a loan with the lowest interest rate, a loan with the lowest total dollar amount for origination points or fees and discount points, and a loan with the lowest rate with no risky features, such as a prepayment penalty or negative amortization;

2. The loan options presented to the consumer are obtained by the loan originator from a significant number of the creditors with whom the loan originator regularly does business; and

3. The loan originator believes in good faith that the consumer likely qualifies for the loan options presented to the consumer.

The new rules became effective on April 5, 2011 after a temporary stay, initially granted by the U.S. Court of Appeals for the D.C. Circuit on March 31, 2011, which was subsequently lifted on April 5, 2011.

Federal Reserve Board Issues Significant Proposed Consumer Protection and Disclosure Rules for Reverse Mortgages and other Home Loans

On August 16, 2010, the Federal Reserve also issued a set of proposed rules that are aimed at enhancing consumer protection and clarity of disclosures for open-end and closed-end mortgage transactions, including reverse mortgage transactions. On September 24, 2010, the proposed rule was published in the Federal Register for public comment.

This is the second major rulemaking phase to improve consumer disclosures and to prohibit certain practices in the mortgage lending industry. The first phase began with rules proposed in August 2009. This phase represents significant changes to Regulation Z that include changes to reverse mortgages and all other mortgages.

Note however, that on February 2, 2010, the Federal Reserve Board (the Board) announced that it does not expect to finalize three pending proposed rules under Regulation Z prior to the transfer of authority for rulemakings under the federal Truth in Lending Act (TILA) to the Consumer Financial Protection Bureau (CFPB).

General rulemaking authority for TILA transferred to the CFPB on July 21, 2011 (the “designated transfer date”). The Dodd-Frank Act also requires that the CFPB issue a proposal within 12 months after the designated transfer date to combine, in a single form, the mortgage disclosures required by TILA and the disclosures required by the Real Estate Settlement Procedures Act (RESPA). In light of that directive by Congress to the CFPB, the Board has concluded that its finalizing several pending Regulation Z proposals prior to the designated transfer date is not in the public interest.

The Board issued two proposed rules in August 2009, which set forth proposed revisions to the disclosures under TILA for closed-end mortgage loans and open-end credit secured by a consumer’s dwellings (home equity lines of credit). The Board also issued a third set of proposed rule changes and revisions in September 2010. Among other things, this September 2010 proposal included changes to the disclosures consumers receive to explain their right to rescind certain loans and would have clarified the responsibilities of the creditor if a consumer exercises this rescission right. The September 2010 proposal also included changes to the disclosures for reverse mortgages, restrictions on certain advertising practices and sales practices for reverse mortgages, changes to the disclosure obligations of loan servicers, as well as proposed new disclosures for loan modifications.

On September 24, 2010, the Board also issued an Interim Final rule on MDIA related disclosure changes to provide guidance on rate and payment disclosures mandated by the Housing and Economic Recovery Act of

2008, which changes had a statutory effective date of January 30, 2011. In that Interim rule, the Board noted it would issue final MDIA related regulations to further provide guidance in the future. Given its announcement on February 2, 2011 to refrain from finalizing other pending Regulations Z items, it is not clear that the Board will act to issue final MDIA disclosure rules prior to the designated transfer date, thus possibly leaving the CFPB to take up that matter also.

The Board received numerous comments to the August 2009 and September 2010 proposals, as well as the Interim MDIA rule, including comments from mortgage industry participants expressing the view that the Board should delay further rulemaking in these areas to allow the CFPB to coordinate the Dodd-Frank Act mandated RESPA/TILA reform with pending proposed Regulation Z changes. Although there are specific provisions of the August 2009 and September 2010 proposals that would not be affected by the CFPB's development of joint TILA-RESPA disclosures, the Board indicates that attempting to finalize these proposals now in a piecemeal fashion would be of limited benefit, and the issuance of multiple rules with different implementation periods would create further compliance difficulties.

Summary of Major Proposed Provisions

This latest proposed rule contains significant changes to required disclosures and practices in connection with reverse mortgage transactions, including:

- Improving consumer disclosures provided in connection with reverse mortgage loans, including changes to the timing, format and content of such disclosures;
- Requiring a new, two-page disclosure to be given at application for a reverse mortgage loan to clarify basic features and risks of reverse mortgages;
- Prohibiting certain practices in the sale of financial products in connection with a reverse mortgage loan, including prohibiting a creditor from conditioning a loan on the purchase of another financial or insurance product;
- Requiring counseling about reverse mortgages at least three business days before a creditor can impose any nonrefundable fees or close a reverse mortgage loan; and
- Imposing new rules on the advertising of reverse mortgage loans.

The proposed rule also makes significant changes to all home loan transactions, including:

- Requiring a transaction-specific disclosure within three days of receiving an application;
- Providing final disclosures at least three days before closing;
- Improving disclosures to clearly explain to the consumer that they have a right to rescind certain mortgage transactions;
- Ensuring that new disclosures are provided when a modification to an existing closed-end mortgage loan occurs;
- Revising the definition of a “higher-priced mortgage loan” in order to ensure exclusion of prime loans;

- Clarifying the responsibilities of the creditor if a consumer exercises a right to rescind;

- Requiring the refunding of fees if a consumer decides to withdraw the application within three days after receiving the disclosures; and

- Requiring a loan servicer to respond to a borrower request for information on the ownership of their loan within 10 business days.

Reverse Mortgage Disclosures

The proposed rule would require a creditor to provide a consumer with new and revised reverse mortgage disclosures.

Disclosures at Application

Currently, a creditor is required to provide a consumer with a Board-published, 20-page long HELOC brochure, or similar disclosure, at the time of an application for a HELOC. However, it does not contain information specific to reverse mortgages.

Before the consumer applies for a mortgage, the creditor must provide a new two-page notice summarizing basic information and risks regarding reverse mortgages, entitled "Key Questions To Ask about Reverse Mortgage Loans" to replace the current HELOC and closed-end application disclosures.

The proposed rule would require a creditor to provide the new ''Key Questions'' document for all reverse mortgages, whether open- or closed-end, or fixed- or adjustable-rate.

Within three business days of application, and again before the reverse mortgage loan is consummated (or the account is opened, for an open-end reverse mortgage), the following must be provided:

- Loan cost information specific to reverse mortgages that is integrated with information required to be disclosed for all home-equity lines of credit (HELOCs) or closed-end mortgages, as applicable; and
- A table expressing total costs as dollar amounts, in place of the table of reverse mortgage ''total annual loan cost rates.''

Reverse Mortgage Cost Disclosures

Currently, all reverse mortgage creditors must provide the TALC disclosure at least three business days before account-opening for an open-end reverse mortgage, or consummation for a closed-end reverse mortgage.

For closed-end reverse mortgages, creditors must provide early TILA disclosures within three business days after a consumer's application and at least seven business days before consummation.

If the early TILA disclosure becomes inaccurate, the creditor must provide corrected disclosures before consummation. Under the MDIA, if the APR changes and exceeds certain tolerances, the creditor must provide a corrected disclosure that the consumer must receive at least three business days before consummation.

For open-end reverse mortgages, creditors must provide disclosures on or with an application that contains information about the creditor's open-end reverse mortgage plans. Creditors are then required to disclose transaction-specific costs and terms at the time that an open-end reverse mortgage plan is opened.

The proposed rule creates three consolidated reverse mortgage disclosure forms:

- An early disclosure for open-end reverse mortgages;
- An account-opening disclosure for open-end reverse mortgages; and
- A closed-end reverse mortgage disclosure.

Rather than receiving two or more disclosures under TILA at different times and in different formats, under the proposed rule, consumers would receive all the disclosures in a single format regardless of whether the reverse mortgage is structured as open-end or closed-end credit.

The proposed rule also provides creditors with a single set of forms that are specific to and designed for reverse mortgages, rather than requiring creditors to modify and adapt disclosures designed for forward mortgages.

For reverse mortgages, the proposed rule requires creditors to provide either:

- The ‘‘early’’ open-end reverse mortgage disclosure within three business days after application, and the account-opening disclosure at least three business days before account opening; or
- The closed-end reverse mortgage disclosures within three business days after application and again at least three business days before consummation.

Information about Reverse Mortgage Total Costs

Currently, Regulation Z requires reverse mortgage creditors to disclose a table of TALC rates to show consumers how the cost of the reverse mortgage varies over time and with house price appreciation.

The proposed rule would replace the TALC rates disclosure with “more meaningful” information for consumers and requires a table that demonstrates how the reverse mortgage balance grows over time. The table expresses this information as dollar amounts, rather than as annualized loan cost rates.

Under the proposed rule, creditors must provide three items of information:

- The sum of all advances to and for the benefit of the consumer;
- The sum of all costs and charges owed by the consumer; and
- The total amount the consumer would be required to repay.

This information must be provided for each of three assumed loan periods of one year, 5 years, and 10 years.

Other Reverse Mortgage Cost Information

The proposed reverse mortgage disclosures would combine reverse-mortgage-specific information with information that was proposed for HELOCs and closed-end mortgages in 2009.

The proposed disclosure includes information about APRs, variable interest rates and fees. However, because not all of the information currently required for HELOCs and closed-end mortgages is relevant or applicable to reverse mortgage borrowers, the proposed rule removes, or replaces, disclosures that are not likely to provide a meaningful benefit to reverse mortgage consumers.

For open-end reverse mortgages, the proposed rule requires creditors to provide disclosures at least three business days before account opening, consistent with the current rule for the TALC disclosure.

Required Counseling for Reverse Mortgages

The proposed rule requires counseling of consumers seeking to obtain a reverse mortgage loan prior to a creditor charging fees or originating a reverse mortgage loan.

Prospective borrowers of FHA-insured reverse mortgages, known as Home Equity Conversion Mortgages (HECMs), must receive counseling before obtaining a HECM.

The proposed rule would prohibit a creditor, or other person, from:

- Originating a reverse mortgage before the consumer has obtained independent counseling from a counselor that meets the qualification standards established by HUD, or substantially similar standards;

- Imposing a nonrefundable fee on a consumer (except a fee for the counseling itself) until three business days after the consumer has received counseling from a qualified counselor; and

- Steering consumers to specific counselors or compensating counselors or counseling agencies.

The proposed rule applies to HECMs as well as proprietary reverse mortgages. Similar rules already apply to FHA-insured HECM loans under current FHA rules and guidelines.

To confirm that the consumer completed the counseling, creditors would rely on a certificate of counseling in a form approved by HUD, or a substantially similar form.

Prohibition on Cross-Selling for Reverse Mortgage

The Federal Reserve is proposing anti-tying rules specific to reverse mortgages to cover all reverse mortgage originations – including HECMs, proprietary reverse mortgage products and reverse mortgages originated by depository and nondepository institutions. The proposed rule would:

- Prohibit a creditor or broker from requiring a consumer to purchase another financial or insurance product (such as an annuity) as a condition of obtaining a reverse mortgage; and

- Provide a ‘‘safe harbor’’ for compliance if, among other things, the reverse mortgage transaction is consummated (or the account is opened) at least ten calendar days before the consumer purchases another “financial or insurance product.”

- Define ‘‘financial or insurance product’’ to include both bank products, such as loans and certificates of deposit, and non-bank products, such as annuities, long-term care insurance, securities, and other nondepository investment products.

- Exempt from the definition of ‘‘financial or insurance product’’ are savings and certain other deposit accounts established to disburse reverse mortgage proceeds, as well as products and services intended to protect the creditor’s or insurer’s investment, such as mortgage insurance, property inspection services, and appraisal or property valuation services.

Reverse Mortgage Advertising

The proposed rule amends Regulation Z to revise the advertising rules for reverse mortgages.

Regulation Z currently contains rules that apply to advertisements of HELOCs and closed-end mortgages, including reverse mortgages. Advertisements containing certain specified credit terms, including payment terms, must also include additional advertising disclosures under Regulation Z, such as the APR.

For closed-end mortgages, including reverse mortgages, Regulation Z prohibits seven misleading or deceptive practices in advertisements, including:

- Misleading advertising of “fixed” rates and payments;
- Misleading comparisons in advertisements;
- Misrepresentations about government endorsement;
- Misleading use of the current lender's name;
- Misleading claims of debt elimination;
- Misleading use of the term “counselor;” and
- Misleading foreign-language advertisements.

Moreover, a clarifying statement would be required for:

- Advertisements stating that a reverse mortgage ‘‘requires no payments;’’
- Advertisements stating that a consumer need not repay a reverse mortgage ‘‘during your lifetime;’’ and
- Advertisements stating that a consumer ‘‘cannot lose’’ or there is ‘‘no risk’’ to a consumer’s home with a reverse mortgage.

For example, the proposed rule requires advertisements that state that a reverse mortgage ‘‘requires no payments’’ to clearly disclose the fact that borrowers must pay taxes and required insurance.

NRMLA submitted detailed comments on these proposed Regulation Z reverse mortgage rule changes, and suggested, among other things, to simplify and streamline the disclosure for reverse mortgages and clarify or revise the “cost of credit” calculations for reverse mortgages.

Deferral of Finalization of Proposed Reverse Mortgage Rules

However, on February 2, 2010, the Federal Reserve Board (the Board) announced that it does not expect to finalize three pending proposed rules under Regulation Z prior to the transfer of authority for rulemakings under the federal Truth in Lending Act (TILA) to the Consumer Financial Protection Bureau (CFPB).

General rulemaking authority for TILA is scheduled to transfer to the CFPB on July 21, 2011 (the "designated transfer date"). The Dodd-Frank Act also requires that the CFPB issue a proposal within 12 months after the designated transfer date to combine, in a single form, the mortgage disclosures required by TILA and the disclosures required by the Real Estate Settlement Procedures Act (RESPA). In light of that directive by Congress to the CFPB, the Board concluded that its finalizing several pending Regulation Z proposals prior to the designated transfer date is not in the public interest.

HUD General Counsel Responds to FDIC on Repurchase Facilities

On March 11, 2011, Helen Kanovsky, General Counsel of the Department of Housing and Urban Development (HUD) sent a letter to the Acting General Counsel of the Federal Deposit Insurance Corporation (FDIC), Mr. Michael H. Krimminger, in response to an FDIC inquiry regarding financing arrangements secured by repurchase agreements. In the letter, Ms. Kanovsky refers to the November 24, 2010 Notice from HUD, published in the Federal Register at 75 Fed. Reg. 71724, which requested information with respect to possible changes in warehouse lending and other financing arrangements used to fund federally-related mortgage loans. Ms. Kanovsky indicates that a financing arrangement, whereby a mortgage lender obtains funds to close a mortgage loan through a financing arrangement with a warehouse lender, which involves a repurchase agreement is not materially different from other forms of warehouse lending for purposes of the Real Estate Settlement Procedures Act (RESPA). Further, HUD would examine a financing arrangement secured by a repurchase agreement consistently with its analysis of traditional warehouse lines of credit arrangements, which considers regulations on tablefunding (24 C.F.R § 3500.2) and secondary market transactions (24 C.F.R. § 3500.5(b)(7). Finally, Ms. Kanovsky indicates that this analysis applies only to the type of repurchase agreement identified in the letter, which is one that is a contractual arrangement among distinct, unaffiliated entities, where the mortgage lender agrees to sell a mortgage loan to an investor, but uses the repurchase agreement with a warehouse lender as a funding mechanism.

"Know Before You Owe" (or RESPA-TILA Reform, Again, But this Time We Mean It!)

Section 1032 of the Dodd-Frank Act provided the CFPB with authority to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

Any final rule prescribed by the Bureau requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures. A model form issued shall contain a clear and conspicuous disclosure that, at a minimum: (A) uses plain language comprehensible to consumers; (B) contains a clear format and design, such as an easily readable type font; and (C) succinctly explains the information that must be communicated to the consumer.

Any model form shall be validated through consumer testing. In prescribing rules for disclosures, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

Any covered person that uses such a model form shall be deemed to be in compliance with the disclosure requirements respect to such model form.

The Bureau may permit a covered person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumers that are designed to improve upon any model form, or any other model form issued to implement an enumerated statute, as applicable.

Not later than one (1) year after the designated transfer date, the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act and sections 4 and 5 of the Real Estate Settlement Procedures Act of 1974 (i.e., the settlement statement and home buying information booklet), into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the Board of Governors of the Federal Reserve and the Secretary of Housing and Urban Development (HUD) carries out the same purpose.

The mortgage industry and regulators attempted several times in the past to undertake "RESPA-TILA" reform and combine the Truth-in-Lending and RESPA application and loan closing disclosures. Such efforts began in 1998, and were undertaken again by HUD in 2002, culminating in a proposed rule that created a "Guaranteed Mortgage Application Package" (or "the GMPA"). The GMPA form and related proposed procedures were not adopted, but this proposed RESPA rule by HUD was the precursor to the revised RESPA GFE and HUD-1 forms and procedures that went into effect on January 1, 2010.

Starting in May 2011, the CFPB began the "Know Before You Owe" campaign, as a precursor to the its Dodd-Frank Act statutorily mandated RESPA-TILA reform effort, by asking the public to compare two different draft designs of a new mortgage disclosure. Over the following months, the Bureau used public input to help it improve its draft designs. Most recently, the CFPB posted one draft design with two different mortgage loans (named Jasmine and Nandina) to determine how well this version of the form allows consumers to comparison shop for a mortgage loan. Prior to the release of the model forms entitled Jasmine and Nandina, the CFPB released and obtained comments on several prior versions of sample model forms, some named Pecan and Ficus, and Redwood and Dogwood. The CFPB has received more than 22,000 comments to its model combined mortgage disclosure. It is important to note that this outreach effort by the CFPB on a sample combined RESPA/TILA disclosure form has not yet moved into proposed rulemaking, but will do so over the next few months.

Risk Retention Proposal

On March 31, 2011, the Office of the Comptroller of the Currency, the Treasury Department, the Board of Governors of the Federal Reserve System (the "Board"), the FDIC, the SEC, the Federal Housing Finance Agency, and HUD (collectively, the "Agencies") published their proposed rules (the "Rules") to implement the new credit risk retention requirements of section 941(b) of the Dodd-Frank Act, which is codified as section 15G of the Securities Exchange Act of 1934 (the "Exchange Act").

The Agencies have recognized that asset-backed securities ("ABSs") that were collateralized by underperforming or otherwise poor-quality mortgage assets contributed heavily to the recent economic turmoil. They have also recognized that investors have been leery about reinvesting in the ABS market, which has slowed access to credit, mortgage writing, and the overall economic recovery. Consequently, the Agencies have drafted these much-discussed "skin in the game" rules, as required by the Dodd-Frank Act, in order to ensure that securitizers collateralize ABSs with high-quality assets to bring confidence back to the ABS investment market. Generally speaking, the Rules require that any entity responsible for securitizing ABSs that are issued to third parties must retain at least five percent (5%) of the credit risk of the assets that are being securitized, and that such an entity may not hedge, transfer away, or otherwise ameliorate this risk (with certain exceptions). Importantly, the Rules also provide for certain exemptions to the requirement of risk retention.

At least one important component of these Rules will depend on definitions that remain to be established by the Consumer Financial Protection Bureau (the "CFPB"). Given the complexity of the Rules, and the extensive list of questions on which the Agencies have requested comments, the final set of requirements may be very different. Originally, comments on the Proposed Rules were due by or before June 10, 2011, however, the Agencies extended the comment deadline until August 1, 2011. As explained below, NRMLA commented upon the Proposed Risk Retention Rule.

General Risk Retention Requirements

Five Percent Rule

As noted above, the Rules require that the sponsor of a securitization transaction must retain at least five percent (5%) of the credit risk of the securitized assets that form the basis of ABS offers. In the case of multiple sponsors, it is the collective duty of all the sponsors to ensure that at least one of them meets this requirement. As noted above, the Rules define a sponsor as "a person who organizes and initiates a securitization transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity." This is functionally identical to the definition of "sponsor" of a securitization transaction found in the SEC's Regulation AB, which governs disclosures for ABS offerings registered under the Securities Act.

However, please note that despite this similarity, the Rules expressly are **not** limited in application to ABS offerings registered under the Securities Act. For example, the Rules would also apply to collateralized debt obligations ("CDOs"), or securities issued and guaranteed by a government sponsored entity such as Fannie Mae, both of which are exempt from registration under the Securities Act. On the other hand, the definition for an ABS under the Rules does not include common or preferred stock, limited liability interests, partnership interest, trust certificates, or similar interests in an issuer that are normally issued to show ownership of the issuer and whose dividends or payments are not primarily dependent on the cash flow of any collateral held by the issuer.

Methods of Risk Retention

The Rules provide for several permissible methods by which sponsors of ABS offerings can meet the five percent (5%) rule. Generally speaking, the method that a sponsor uses is at its own discretion, and usually will depend on the sponsor's business needs and the nature of the asset being securitized. Additionally, each method includes a disclosure requirement meant to provide investors and the Agencies with accurate information regarding the amount and form of risk the sponsor retains in the relevant assets, as well as the aggregate value of the ABS offer in question.

Exemptions from the General Risk Retention Requirements

As mentioned above, the Agencies have noted that ABS failures occurred, in large part, because some securitizers allowed poor-quality assets to serve as the collateral for ABSs. Likewise, the Agencies want to encourage and reward entities who securitize high-quality assets. Consequently, the Rules provide for some exemptions from a securitizer's risk retention requirements, which are discussed below. The Rules generally refer to the securitizer as the "sponsor," and formally define it as "a person who organizes and initiates a securitization transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity." The sponsor is often an investment entity, although to the extent that a mortgage loan originator meets this definition by transferring mortgage assets to an issuing entity to collateralize an ABS offering, it would meet the definition of a sponsor and would be subject to all the requirements in these Rules.

As a threshold matter, please note that mortgages that are insured by the Federal Housing Administration, including FHA-insured HECMs, are separately exempted from the risk retention requirements per provisions within the Exchange Act as added under the Dodd-Frank Act.

Qualified Residential Mortgage Exemption

The Rules exempt a sponsor from any risk retention requirements to the extent that the securitization transaction involves qualified residential mortgages ("QRMs") and meets certain requirements. First, all of the securitized assets that collateralize the ABSs in the transaction must be QRMs, and none of the securitized assets can be other ABSs. Second, as of the closing of the securitization transaction, each QRM must be performing (i.e., no borrower is thirty or more days past due, in whole or in part). Third, the depositor for the ABS must certify that it has evaluated the effectiveness of its internal controls for ensuring that all of the assets are QRMs within sixty days prior to the cut-off date for establishing the composition of the collateral pool. The depositor, in this context, is defined as the person that receives or purchases and transfers or sells the securitized assets to the issuing entity. It can be the sponsor itself, when the assets are not immediately transferred to the issuing entity.

QRM Definition

Note that the Agencies did not make the final decision on what constitutes a QRM because it is tied to the Dodd-Frank Act's definition of a "qualified mortgage." As described above, the Dodd-Frank Act amends the Truth in Lending Act ("TILA"), in part, to provide that no mortgage lender may make a residential mortgage loan unless the lender makes a reasonable and good faith determination based on verified and documented information that the borrower has a reasonable ability to repay the loan, including all applicable taxes, insurance, and assessments.

The amendments also provide a safe harbor from this requirement for loans that meet the standards of high-quality, "qualified mortgages." The Dodd-Frank Act's amendments to the Exchange Act require that the definition of a QRM can be no broader than the definition of a qualified mortgage. The Agencies have attempted to conform the QRM requirements to the broad definition of a qualified mortgage provided by the Dodd-Frank Act. Currently, the Board has rulemaking authority with respect to qualified mortgages, and, on July 21, 2011, that authority will transfer to the CFPB.

Note, however, that on April 19, 2011, the Board proposed two alternative definitions of "qualified mortgages" under its "Ability to Repay" (or ATR-QM) Proposed Rule, as mandated by the Dodd-Frank Act. At this point, the Board's rules on qualified mortgages are in proposed form, and it is unclear in what final form these rules will take, which in turn could impact the standards for QRMs set forth in the Risk Retention Rules. Comments on the Board's "Ability to Repay" proposed rules, and the alternative definitions of "qualified mortgages" thereunder were due by July 22, 2011. In this regard, please note that the standards for qualified mortgages, and thus QRMs, may very well change in the coming months.

Exemption for Federally Insured or Guaranteed Mortgage Loan Assets

The Rules implement section 15G(e)(3)(B) of the Exchange Act, which exempts from the risk retention requirement any residential, multifamily, or health care facility ("Government-Insured") mortgage loan asset or securitization based on the fact that such an asset or securitization is insured by the United States or any agency of the United States. However, pursuant to section 15G of the Exchange Act, the Rules affirm that Fannie Mae, Freddie Mac, and the Federal Home Loan Banks are **not** considered agencies of the United States for purposes of this exemption. Nonetheless, the Act provides that as long as the GSEs are in conservatorship under the auspices of the Federal Housing Finance Agency (or the "FHFA") the GSEs are not subject to the risk retention rules. Accordingly, loans sold to the GSEs correspondingly will not be subject to the risk retention requirements until the conservatorship is completed.

With regard to Government-Insured mortgage loan assets, payment of the principal and interest must be insured or guaranteed by the United States or one of its agencies. The amount of such insurance or guarantee varies by the agency. With regard to securitization of a Government-Insured asset, the United States or its agencies must insure or guarantee payment of the principal and interest of the ABS in question, and this ABS must be collateralized solely through Government-Insured mortgage loan assets or interests in such assets. This exemption, for example, would extend to securities guaranteed by Ginnie Mae.

Other Exemptions

The Rules also generally provide for other exemptions from the risk retention requirement. Pursuant to certain requirements of the Exchange Act, the Rules fully exempt any securitization transaction if the relevant ABSs are: collateralized solely (excluding cash and cash equivalents) by obligations issued by the United States or any of its agencies; collateralized solely (excluding cash and cash equivalents) by assets that are fully insured or guaranteed by the United States or its agencies, or fully guaranteed as to timely payment of principal and interest by the United States or its agencies. This exemption does not rely upon Government-Insured assets, as described above. However, please note that the under this exemption, Fannie Mae, Freddie Mac, and the Federal Home Loan Banks are still not considered agencies of the United States. [As stated above, however, as long as the GSEs are in conservatorship under the auspices of the Federal Housing Finance Agency (or the "FHFA") the GSEs are not subject to the risk retention rules. Accordingly, loans sold to the GSEs correspondingly will not be subject to the risk retention requirements until the conservatorship is completed.]

No Creation of or Exemption for "Qualified Reverse Mortgages"

Under the Agencies' Proposed Risk Retention Rule, reverse mortgages could not be "qualified residential mortgages" (or QRMs). The Agencies noted that reverse mortgages may be "qualified mortgages" (under the Board's Proposed ATR-QM Rule) only to the extent that they meet certain standards to be determined by regulation by the Board or CFPB under section 129C(b)(2)(A)(ix) of TILA. Because the extent to which reverse mortgages may be considered a QM under TILA is not yet known, the Agencies have excluded reverse mortgages from potential QRM status.

NRMLA Comments on the Risk Retention Rule

NRMLA submitted comments on the Agencies' proposed Risk Retention Rule. Because the Agencies' definition of a Qualified Residential Mortgage (which acts as an exemption from the risk retention requirements) could not be broader than the Board's definition of a Qualified Mortgage under the ATR-QM rules, but the Board did not include reverse mortgages in the class of Qualified Mortgages, NRMLA asked the Board to create a definition of Qualified Reverse Mortgages. NRMLA correspondingly asked the Agencies to create a class or category of proprietary reverse mortgages that could meet definition of a Qualified Residential Mortgage under the Risk Retention Rule. NRMLA also asked the Agencies to cooperate with the Board (now the Bureau) in crafting such definitions under the ATR-QM and Risk Retention rules.

In its comment letter, NRMLA noted that a 5% risk retention requirement would have a chilling effect on the return of the private reverse mortgage securitization market, and asked the Agencies to create a limited class of non-FHA-insured reverse mortgages deemed as "qualified residential mortgages" for purposes of an exception to the 5% Risk Retention Rule if such loans meets the following criteria:

- Requires mandatory counseling prior to origination,
- Contains an initial loan advance ratio of no greater than 60% of the initial collateral property value;

- 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, and

- Carries no prepayment penalty.

Given the complexity of the Rules, and the extensive list of questions on which the Agencies have requested comments, the final set of requirements may be very different from those proposed.

Changes to Federal Preemption under the Dodd-Frank Act

National Bank Act Preemption

The Dodd-Frank Act "clarified" preemption of state law for national banks, and removed preemption available to operating subsidiaries of national banks or federally chartered thrifts, unless such subsidiaries are themselves a national bank or federally chartered thrift. The Dodd-Frank also made the Office of Thrift Supervision a division of the Office of the Comptroller of the Currency (or the "OCC") and federally chartered thrifts are now regulated by the OCC, and now only enjoy the same preemptive powers as those provided for national banks, as amended by the Dodd-Frank Act.

The Dodd-Frank Act "clarifies" the preemption of state laws provided by the National Bank Act for national banks by stating that the preemption standard for any "state consumer financial law" is the standard set out by the U.S. Supreme Court in the 1996 case of *Barnett Bank*. State laws other than a State consumer financial law presumably would continue to be subject to more general National Bank Act preemption standards.

State consumer financial laws are preempted, only if: (A) application of a State consumer financial law would have a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by that State; (B) in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County, N. A. v. Nelson, Florida Insurance Commissioner, et al*., 517 U.S. 25 (1996), the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers; and any preemption determination under this subparagraph may be made by a court, or by regulation or order of the Comptroller of the Currency on a case-by-case basis, in accordance with applicable law; or (C) the State consumer financial law is preempted by a provision of Federal law other than Title X of the Dodd-Frank Act.

The term "State consumer financial law" means a State law that does not directly or indirectly discriminate against national banks and that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

The Dodd-Frank Act further places limits on OCC preemption determinations and provides that the OCC may not issue preempting regulations of state law without first conferring with the Bureau, and must make such determinations a case by case basis. The Dodd-Frank Act also provides that courts reviewing OCC preemption determinations must assess the validity of such determinations, depending upon the thoroughness evident in the consideration of the agency, the validity of the reasoning of the agency, the consistency with other valid determinations made by the agency, and other factors which the court finds. Further, a regulation or order of the OCC regarding preemption of a State consumer financial law shall not be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding regarding the

preemption of such provision in accordance with the legal standard of the decision of the Supreme Court of the United States in the *Barnett Bank* case.

The Dodd-Frank Act also requires the OCC to periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The OCC shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. At the time of issuing such review, the OCC also shall submit a report regarding such review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report submitted to the respective committees shall address whether the OCC intends to continue, rescind, or propose to amend any determination that a provision of Federal law preempts a State consumer financial law, and the reasons therefor.

The Dodd-Frank Act also codifies the Supreme Court of the United States in *Cuomo v. Clearing House Assn., L.L.C.* (129 S. Ct. 2710 (2009)), by providing that no provision of Title X which relates to visitorial powers or otherwise limits or restricts the visitorial authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring an action against a national bank in a court of appropriate jurisdiction to enforce an applicable law and to seek relief as authorized by such law. Thus, although states' attorneys general may not "visit" or "regulate" national banks (or federally chartered thrifts), they may sue national banks or federally chartered thrifts in state or federal court to enforce a regulation issued by the Bureau under Title X (or secure other remedies provided by applicable law), but must first confer with the Bureau before doing so.

The Parity Act

Section 1083 of the Dodd-Frank Act "rolls back" preemption under the federal Alternative Mortgage Transaction Parity Act (or "AMTPA" or the "Parity Act") for state chartered housing creditors. Originally enacted in 1982, during times of very high interest rates in the mortgage industry and credit markets, the Parity Act provided that state housing creditors could make alternative mortgages along lines similar to federally chartered banks notwithstanding state law restrictions on such alternative mortgage features, such as negative amortization, compounding of interest upon interest and balloon payments, unless a state "opted out" of such federal preemption. Only six states so opted out.

As amended by the Dodd-Frank Act, effective July 21, 2011, the definition of an "alternative mortgage" under the Parity Act has been significantly reduced to a loan with a variable interest rate, and the scope of federal preemption of state laws also has been reduced to preempt only those state laws that prohibit or restrict mortgage loans with variable rate features. Further, the rulemaking authority under the Parity Act was transferred from various federal banking agencies to the CFPB.

However, while the "roll back" of Parity Act preemption became effective on July 21, 2011, under the Dodd-Frank Act Congress did not provide the CFPB with authority to issue regulations under the Parity Act as revised until after the designated transfer date (i.e. July 21, 2011). Thus, on July 22, 2011, the CFPB issued an Interim Final Rule without first proposing a rule and receiving comments. The CFPB issued an Interim Final Parity Act Rule in order to provide the mortgage industry with guidance on making alternative mortgages. In its Interim Final Rule, the CFPB also solicited comments on its rule.

On September 22, 2011, NRMLA submitted comments to the recent "Parity Act" Interim Final Rule issued by the CFPB. NRMLA's detailed comments to the CFPB provided it with responses to many of the items on which the CFPB requested comments. Of course, NRMLA's comments focused upon reverse mortgages.

Among other things, NRMLA's comment letter outlined the types and number of reverse mortgages being originated today, and the types of lenders that make such loans. NRMLA also provided a summary of state laws

that address reverse mortgages, noting that most, if not all states' laws allow reverse mortgages, or do not prohibit loans with salient reverse mortgage features (i.e., negative amortization, compounding of interest upon interest, or single payment features).

NRMLA posited, however, that continued support from the federal agencies and uniformity in the reverse mortgage industry are needed. In this regard, NRMLA noted that some states recently have enacted specific reverse mortgage legislation. And, for every bill enacted into law, many bills are introduced in the state houses, but are not always enacted into law. NRMLA suggested that if some of those bills had passed, perhaps a chilling effect would have occurred on legitimate reverse mortgage lending activity. In order to avoid this result in the future, and provide continued support for the uniform features of the FHA HECM program (and reverse mortgage more generally) nationwide, NRMLA requested that the CFPB create specific protective rules for reverse mortgages under the Parity Act and authority granted to it under the Dodd-Frank Act and other federal laws.

While the CFPB will review the comments of NRMLA and others on the Interim Final Parity Act Rule, to date no time table has been set by the CFPB to act upon those comments and finalize the Parity Act rules and provisions as amended by the Dodd-Frank Act. However, final rules undoubtedly will be issued prior to July 21, 2012.

FTC Issues Final Rule on Mortgage Acts and Practices

On July 19, 2011, the Federal Trade Commission ("FTC") issued its final rule on Mortgage Acts and Practices (the "MAPS Rule"). Generally, the MAPS Rule prohibits any misrepresentation in any "commercial communication" regarding any term of a "mortgage credit product." It imposes 2 year recordkeeping requirements on all materially different advertisements, as well as materials reflecting the existence and terms of those products advertised. The FTC's press release is available here: http://www.ftc.gov/opa/2011/07/mortgageads.shtm.

The MAPS Rule covers all companies that engage in advertising for mortgage credit products (i.e., "any form of credit that is secured by real property or a dwelling and that is offered or extended to a consumer primarily for personal, family, or household purposes.") Importantly, the FTC's jurisdiction does not extend to banks, savings and loan institutions, federal credit unions, or non-profit organizations. However, the MAPS Rule will cover mortgage lenders, mortgage brokers, mortgage servicers, real estate brokers, advertising agencies, home builders, lead generators, rate aggregators, and any other for-profit company that may market or advertise mortgage products.

The new Consumer Financial Protection Bureau will also have the ability to enforce the regulation. The MAPS Rule provides enforcement power to states' Attorneys General as well.

The MAPS Rule prohibits any material misrepresentation, either express or implicit, in any commercial communication, regarding any term of any mortgage credit product. The MAPS Rule defines "commercial communication" very broadly, encompassing any written or verbal statement, illustration, or depiction designed to effect a sale or create interest in purchasing goods or services. Coverage includes such media as television, radio, internet, product labels, packages, package inserts, billboards, catalogues, and others. Promotional materials and webpages are specifically included. "Mortgage credit products" include loans secured by "a residential structure that contains one to four units, whether or not that structure is attached to real property." The definition includes not only single-family homes, but also such structures as condominiums, cooperative units, mobile homes, and manufactured homes.

The FTC provides a non-exhaustive list of practices it deems to violate the MAPS Rule, including misrepresentations regarding:

- The amount of interest the consumer owes each month that is included in the payments, loan amount, or total amount due;

- Whether the difference between the interest owed and the interest paid is added to the total amount due from the consumer;

- The annual percentage rate, simple annual rate, periodic rate, or any other rate;

- The existence, nature, or amount of fees or costs to the consumer, including misrepresentations that no fees are charged;

- The existence, cost, payment terms, or other terms associated with any additional product or feature sold in conjunction with the mortgage credit product;

- The terms, amount, payments, or other requirements relating to taxes or insurance, including whether separate payment of taxes and insurance is required;

- The existence, nature, or amount of any prepayment penalty;

- The variability of interest rates, including using the term fixed for rates that are not fixed;

- Comparisons between rates or payments that are available for less than the full life of the product and any actual or hypothetical rate or payment;

- The amortization of any product;

- The existence or amount of any minimum or required payments, including statements regarding what is required in a reverse mortgage;

- The circumstances in which a consumer may default, including for non-payment of taxes, insurance, or maintenance;

- The effectiveness of any product in assisting the consumer to pay off currently existing debts;

- The affiliation of any provider or other person or programs, including misrepresentations about affiliation with government programs and use of government logos when a company is not affiliated with such programs;

- Whether statements are being made on behalf of the consumer's current lender or servicer, instead of on behalf of a third-party company;

- The right of the consumer to reside in the dwelling and the duration of such right;

- The consumer's ability to obtain any particular product, including representations that the consumer is preapproved or guaranteed to obtain a certain product;

- The ability to refinance or modify any product; and

- The availability or substance of counseling services.

With respect to reverse mortgages, of note under the MAPS Rule, Section 321.3(l) prohibits misrepresentations about the potential for default on the mortgage credit product, including, but not limited to, misrepresentations about the circumstances under which the consumer could default for nonpayment of taxes or insurance, failure to maintain the property, or non-compliance with other obligations. It would violate this section for a reverse mortgage lender to make the false or misleading claim that ''no matter what, you can stay in your home for life,'' when the lender can force the sale of the property if the consumer does not adequately maintain the property.

Further, section 321.3(k) of the Rule prohibits misrepresentations about the existence, number, amount, or timing of any minimum or required payments. The Commission emphasizes that the Final Rule does not prohibit a person from including in an advertisement truthful, non-misleading information about the borrower's responsibility to pay real estate taxes and hazard insurance. The Commission notes, however, that the determination of whether an advertisement is deceptive is based on the net impression of the advertisement as a whole. Thus, a fine print disclosure about the borrower's need to pay taxes and insurance often would not be sufficient to qualify a more prominent claim that the borrower need not make monthly payments. Therefore, making clear in a reverse mortgage advertisement that that the borrower has no regular monthly repayment installment obligations under the loan but must pay the real estate taxes and hazard insurance, would not be sufficient if made in a fine print disclosure compared to a more prominent claim that the borrower need not make monthly payments.

Also, section 321.3(s) bars misrepresentations about the availability, nature, or substance of counseling services or any other expert advice offered to the consumer regarding any mortgage credit product or term, including, but not limited to, the qualifications of those offering the services or advice. Because § 321.3(s) in the Final Rule applies to any ''person,'' as defined in § 321.2(f), it applies to all of these types of individuals or entities, including counselors and counseling agencies, and also applies to lenders and loan originators.

Moreover, advertisements may include valid professional designations, such as a Better Business Bureau indication or reference to status as a Certified Reverse Mortgage Professional for a loan originator if such representation is a truthful, non-deceptive reference to valid professional designations.

Section 321.3(p) prohibits misrepresentations about the consumer's right to reside in the dwelling that is the subject of the mortgage credit product, including, but not limited to, false or misleading claims about how long or under what conditions a consumer can stay in the dwelling. Thus, the Final Rule does not prohibit a person from including in an advertisement truthful, non-misleading information about the obligations the borrower must meet to stay in the dwelling. Thus, it is not a violation of § 321.3(p) if the advertisement makes clear that the borrower must maintain the collateral property, satisfy any occupancy requirements, and timely pay the real estate taxes and hazard insurance, if such are required and applicable under the loan agreement.

It is a violation of §§ 321.3(n) or (o) if the advertisement misrepresents, respectively: (1) the association of the mortgage credit product or any provider of the product with any other person or program, or (2) the source of any commercial communication, such as whether it is made by or on behalf of the consumer's current lender or servicer. Thus, while the final MAPS rule does not require that a commercial communication offering a reverse mortgage loan state whether the entity making the communication is the lender for the loan, and if not, state the role of the entity and its purpose in collecting information about the prospective borrower, failure to clearly disclosure such information could be a violation of §§ 321.3(n) or (o) of the MAPS Rule.

In addition, depending on the circumstances, if advertisements offering reverse mortgages misrepresent that they are offering another type of mortgage, or if advertisements offering other mortgage products misrepresent that they are offering reverse mortgages, such false or misleading claims would violate § 321.3(i).

The MAPS Rule imposes a 24-month recordkeeping requirement on all commercial communications regarding any mortgage credit product, including:

- Copies of all materially different communications, such as sales scripts, training materials, and marketing materials;

- Copies of all documents describing or evidencing all products available to consumers, including the names and terms of each such product; and

- Copies of all documents describing or evidencing any additional products or services offered or provided to consumers in connection with the mortgage credit product.

These records may be kept in any legible manner, and may be kept in the same manner as all other materials the company maintains in the ordinary course of business. Thus, electronic records are fine under the rule, as are hard copies. Failure to keep these records is an independent violation of the MAPS Rule.

The MAPS Rule is a comprehensive new advertising and recordkeeping regulation with the potential to greatly affect the mortgage origination and servicing industry, as well as the greater real estate industry that provides complementary services to the mortgage industry. Because the MAPS Rule becomes effective so soon, we encourage you to prepare for the additional advertising and recordkeeping burdens this new regulation requires. We also encourage you to contact us with any questions you may have regarding the MAPS Rule, compliance with it, and its potential effect on mortgage industry participants.

The MAPS Rule became effective August 19, 2011.

FHA Updates

Financial Assessment for HECM Borrowers

In a letter published on October 5, 2011, Acting FHA Commissioner Carol Galante stated that HECM lenders are authorized to underwrite HECM loans so they can identify customers who are potentially at risk of defaulting on their reverse mortgages because they can no longer meet their financial obligations.

FHA is developing new rules outlining procedures for conducting financial assessments of HECM borrowers. The purpose of Commissioner Galante's letter is to clarify for lenders that they already have the authority to conduct assessments to ensure clients have the capacity to continue paying property taxes, homeowners insurance and other obligations after the reverse mortgage is made.

The letter notes that HUD does not prohibit the inclusion of additional financial capacity and credit assessment criteria and processes in the origination and approval of HECM transactions, unless such criteria or processes violate FHA statutes and regulations or other applicable law, such as Fair Housing/Fair Lending laws, and the Equal Credit Opportunity Act, Regulation B.

The letter also states that the "The Helping Families Save Their Homes Act," enacted May 20, 2009, emphasizes the importance of FHA-approved lenders engaging in responsible business practices that conform to generally accepted practices of prudent lenders.

HUD Dramatically Revises FHA Lending Requirements

On September 23, 2011, the Department of Housing and Urban Development ("HUD") released Mortgagee Letter 2011-34 (the "Letter"). The requirements set forth in the Letter, which became effective on the Letter's release, substantially change the playing field for FHA lenders. We address the most important changes in this

release. For further information on these new requirements, please contact the attorneys at Weiner Brodsky Sidman Kider PC.

In a sweeping and far-reaching change to FHA lender requirements, HUD has expanded the single family origination lending area of each home office and registered branch office to include all HUD field office jurisdictions. Previously, a specific office could only make loans in a geographically-designated lending area. Now, however, an FHA single-family lender is free to make loans on a nation-wide basis out of any home or registered branch office, provided that the lender independently meets the loan origination requirements of each State in which the loans are made. This is a dramatic expansion of the ability of FHA lenders to make loans nationally.

Additionally, HUD has reiterated its position on net branching arrangements. Net branching is a practice in which a party other than the approved FHA lender (often the branch manager) pays some or all of the branch's office expenses. HUD has previously disallowed this practice and held that FHA lenders must pay all operating expenses of each of their home, branch, and direct lending offices. However, it appears that some lenders may still engage in prohibited net branching arrangements. Consequently, HUD has reaffirmed that FHA lenders may not engage in prohibited net branching activities. If you have questions concerning your branching arrangements, we would be pleased to review them to ensure that you are in compliance with HUD's requirements on this issue.

Finally, HUD has amended its requirements regarding office facilities. The Letter states that an approved FHA lender may conduct loan origination and/or servicing activities from its home office and from any branch or direct lending branch office, so long as these offices fully comply with all applicable State licensing requirements in the jurisdiction where the office is located. Additionally, while HUD is maintaining the home office requirements set forth in paragraph 2-11.A of Handbook 4060.1, HUD has rescinded the requirements for traditional branch offices, non-traditional branch offices, and direct lending branch offices set forth in paragraphs 2-11.B through D of Handbook 4060.1. Furthermore, non-supervised mortgagee and non-supervised loan correspondent applicants are no longer required to submit evidence of acceptable home office facilities as part of the mortgagee approval process; HUD will verify that the home office complies with the home office requirements through on-site visits.

These changes are significant to virtually every FHA lender and provide opportunities that you should take into account in connection with your lending and servicing activities.

New and Revised HECM Counseling Requirements

On August 26, 2011, HUD issued Mortgagee Letter 2011-31 (ML 11-31) revising HECM counseling requirements and providing an updated form of the HECM counseling certificate. The guidance and requirements in ML 11-31 become effective 30 days from the date of ML 11-31.

ML 11-31 requires non-borrowing spouses to obtain HECM counseling. Thus, the following parties will now be required to obtain HECM counseling and sign the HECM counseling certificate: (a) all property owners appearing on the title to the property (or their legal representative if the case involves lack of competency), and (b) the non-borrowing spouse. This requirement in ML 11-31 represents a change in HUD's policy by requiring the non-borrowing spouse to attend HECM counseling and sign and date the HECM counseling certificate. HUD previously recommended, but did not require, that the HECM non-borrowing spouse receive counseling.

ML 11-31 also announced the following changes to the HECM counseling certificate (Form HUD-92902):

a. name and signature line was added for the attorney-in-fact holding the power of attorney;

b. the HECM Saver was added as one of the options that counselors will present to HECM applicants;

c. Agency Tax Identification Number was replaced with Agency Housing Counseling System Identification number;

d. HECM for Purchase Certification by the homebuyer was added to the HECM counseling certificate.

According to ML 11-31, lenders should use the Case Number Assignment screen or the Insurance Application screen in FHA Connection to associate the HECM counseling certificate number with a new FHA case number. According to ML 11-31, existing case numbers may be transferred by one HECM lender to another without regard to the HECM counseling certificate expiration date.

Under HUD's existing rules, HECM counseling certificates expire 180 days from the date of counseling. ML 11-31 indicates that FHA case numbers expire six (6) months after the date of the last activity on FHA Connection. ML 11-31 reminds lenders to act expediently to obtain a new FHA case number because each case must be associated with a unique HECM counseling certificate which expires 180 days from the date of counseling.

HECM Loan Limit Remains at $625,500

Via Mortgagee Letter 2011-29 (August 19, 2011) HUD indicated that all purchase, traditional and HECM to HECM refinance mortgages insured on or after October 1, 2011, cannot exceed 150 percent of the national conforming limit of $417,000, which is set in conformance with section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)).

For the period October 1, 2011 through December 31, 2011, the loan limit and maximum claim amount for FHA-insured HECMs will remain at $625,500 (150 percent of Federal Home Loan Mortgage Corporation's (Freddie Mac) national conforming limit of $417,000). This maximum FHA loan limit and maximum claim amount of $625,500 is also applicable to special exception areas - Alaska, Hawaii, Guam and the Virgin Islands.

HUD Approves New HECM Counseling Intermediaries

Also, on August 12, 2011, HUD issued Mortgagee Letter 2011-26 (ML 11-26) that requires HECM lenders to provide borrowers with the names of counseling intermediaries that have been awarded HECM counseling grant funds by HUD. According to ML 11-26, such intermediaries could change each year. For 2011, the following three intermediaries have been added to the list: ClearPoint Financial Solutions, Neighborhood Reinvestment Corporation, and Springboard.

Please note that under existing HECM requirements, HECM lenders must provide each borrower with a list of HECM counseling agencies, including no fewer than nine HUD-approved counseling agencies. The list must include at least five counseling agencies within the local area, state or both of the borrower, with one of the local agencies located within a reasonable driving distance for the purpose of face-to-face counseling. The list also must include the following four national intermediaries: National Foundation for Credit Counseling (NFCC), Money Management International (MMI), National Council on the Aging (NCOA), and CredAbility.

According to ML 11-26, if the "referral date" is on or after May 1, 2011, the list of counseling agencies provided to the borrower must also include the three additional intermediaries, for a total of seven intermediaries (i.e., the four national intermediaries listed above plus the three additional intermediaries receiving HECM grant funds set out in ML 11-26). The "referral date" is the date when the borrower received the list of HECM counselors from the lender. According to ML 11-26, a new field for the "referral date" has been added to the HECM Referral List Update screen on FHA Connection.

Potential HUD Policy Changes on Short Payoffs for HECMs

In July of 2011, HUD issued updated HECM Servicing Frequently Asked Questions ("FAQs"), providing guidance on repayment of HECM loans that become due and payable as a result of the death of the last surviving borrower. According to the FAQs, the borrower's estate or heirs, including a non-borrowing spouse, may satisfy a HECM loan by paying the lesser of: (a) the loan balance, or (b) 95% of the current appraised value of the property. As described in the FAQs, this right to satisfy the loan by paying 95% of the current appraised value arises when the property is transferred by will or operation of law to the borrower's estate or heirs (including a surviving spouse) following the death of the last surviving borrower.

It should be noted that under HUD's existing regulations, the borrower's heirs or estate have always had the option to sell the property for 95% of the appraised value and apply the net proceeds to the balance of the due and payable HECM loan. In the event of such short payoff, the lender would release its security interest in the property.

The new guidance under the FAQs allows a short payoff without the actual "sale" of the property. According to the FAQs, HUD considers any post-death conveyance by will or operation of law to the borrower's heirs or estate (including a surviving spouse) to fall within the meaning of the term "sale." According to the FAQs, the loan payoff must occur simultaneously with or immediately following the post-death conveyance.

The FAQs also remind lenders and servicers that the property must be appraised after the HECM loan becomes due and payable. According to Section 206.125(b) of the HUD HECM regulations, an appraisal must be obtained: (a) no later than 30 days after receiving notice that the loan is due and payable, (b) no later than 30 days after learning of the borrower's death, or (c) upon the borrower's request in connection with a pending sale. The property also must be appraised no later than 15 days before a foreclosure sale.

HUD/FHA Outlines Requirements for use of Logo, Name, and Acronym in Advertising

The Federal Housing Administration issued Mortgagee Letter 2011-17, April 15, 2011, clarifying the agency's requirements for mortgagees using official logos, names and acronyms of the U.S. Department of Housing and Urban Development or FHA in "devices" used to advertise or promote the business products or operations of FHA-approved mortgagees. For the purpose of the Mortgagee Letter, a "device" is a channel or instrument for soliciting, promoting or advertising FHA products or programs.

FHA may impose sanctions, including civil money penalties, for misuse of the terms "Federal Housing Administration," "Department of Housing and Urban Development," "Government National Mortgage Association," "Ginnie Mae," the acronyms "HUD", "FHA", or "GNMA," or any HUD seal or logo.

FHA found that devices using the HUD and the FHA seals, logos, and acronyms are present in the entire range of electronic and print media utilized by FHA-approved mortgagees, including but not limited to websites, website addresses, business names, aliases, Doing Business As (d/b/a) names, domain names, email addresses, direct mail advertisements, solicitations, promotional materials and correspondence.

Use of FHA Logos

FHA-approved mortgagees may display the two official FHA Approved Lending Institution logos on a device for the purpose of describing and illustrating to the public the types of loan products offered by the mortgagee. When displayed by a FHA-approved mortgagee for this purpose, the FHA Approved Lending Institution logo must be displayed in a discreet manner.

Use of each FHA Approved Lending Institution logo must, in each instance, be accompanied by a conspicuous disclaimer that clearly informs the public that the mortgagee authoring the device is not acting on behalf of or at the direction of HUD/FHA or the Federal government. The disclaimer should be prominently displayed in a location proximate to where the FHA Approved Lending Institution logo is displayed.

The device, when taken as a whole, must emphasize the HUD-registered business name, alias or d/b/a of the mortgagee and not the Federal government, and the device must be written, formatted and structured in a manner clearly identifying the mortgagee as the sole author and originator of the device.

Specifically, the device should reflect the mortgagee's name, location and appropriate contact information. FHA-approved mortgagees are strictly prohibited from displaying official FHA Approved Lending Institution logos in a location or manner in a device that creates the false impression that the device is an official government form, notice or document or that otherwise conveys the false impression that the device is authored, approved, or endorsed by the Department or FHA.

Alteration or modification of an FHA Approved Lending Institution logo is strictly prohibited. Non-approved mortgagees, including Third Party Originators, are prohibited from using the official FHA Approved Lending Institution logos in any device. Moreover, use of the official FHA logo is strictly prohibited. No person, party, company, or firm, including FHA-approved mortgagees, may use the official FHA logo.

Use of HUD Seal

FHA-approved mortgagees, non FHA-approved mortgagees and Third Party Originators are not permitted to display the official HUD seal or any other insignia that imitates an official Federal seal on any device.

Use of HUD/FHA Names and Acronyms

FHA-approved mortgagees may not purport or imply that as a result of their approval to participate in FHA programs that their business products or services are coming directly from HUD or FHA.

The use of the words "federal," "government," "national," "U.S. Department of Housing and Urban Development," Federal Housing Administration," and/or the acronyms "HUD" or "FHA" either alone or with other words or letters, by an FHA-approved mortgagee, non-approved mortgagee or Third Party Originator in a manner that falsely represents that the mortgagee's business services or products originate from HUD, FHA, the Government of the United States, or any Federal, State or local government agency is strictly prohibited. All business names, aliases, and d/b/a used by FHA-approved mortgagees must be registered with HUD-FHA.

Retention of Advertising Materials

FHA requires mortgagees to retain copies of any device they produce that is related to FHA programs for a period of two years from the date that the device is circulated or used by the mortgagee for advertisement, educational, or promotional purposes.

Copies of devices related to FHA programs may be kept in either electronic or print format and are to be provided to HUD upon request. FHA-approved mortgagees are also responsible for ensuring that any advertisements or promotional materials issued by the mortgagee that are in circulation beyond this period are in compliance with the Mortgagee Letter, HUD program requirements and Federal regulations.

Effect on Sponsored Third Party Originators

Effective 30 days from the date of the Mortgagee Letter's publication, loan correspondents previously approved by FHA are prohibited from displaying an FHA Approved Lending Institution logo on any device. No previously FHA-approved loan correspondent, nor any Third Party Originator sponsored by an FHA-approved mortgagee, may engage in any activity or author or distribute any device that falsely advertises, represents or otherwise conveys the impression that the company's business operations, products or services either originate from or are expressly endorsed by the Department or FHA.

Quality Control and Corrective Action

Approved mortgagees must ensure that they take prompt corrective action upon discovering any violation of advertising requirements described in the Mortgagee Letter. This includes advertising abuses by employees of the approved mortgagee, and any violations committed by employees of non-approved mortgagees, Third Party Originators, marketing firms or companies that advertise or generate borrower leads or other business on behalf of the approved mortgagee. Approved mortgagees must include a process for reviewing all advertisements generated by or on behalf of their company for compliance with FHA advertising requirements as part of their Quality Control Plan.

Penalties for Non-Compliance

Failure to follow FHA requirements as outlined in the Mortgagee Letter may result in sanctions, including civil money penalties or administrative action against any person, party, company, firm, partnership or business, including non FHA-approved institutions and individuals.

Effective Date

Except as otherwise stated, all requirements contained in the Mortgagee Letter are effective 30 days from the date of publication.

Quality Control Requirements For Direct Endorsement Lenders

FHA issued Mortgagee Letter 2011-02, January 5, 2011, which clarifies quality control requirements for Direct Endorsement (DE) lenders that use sponsored Third Party Originators (TPO's). The new requirements are effective immediately.

All lenders that have Sponsored TPO's must have a Quality Control Plan that provides for the review of loans originated for the lender by each of its Sponsored TPO's. Lenders must determine the appropriate sample amount of each Sponsored TPO's loans to review based on volume, past experience, and other factors specified in HUD Handbook 4060.1 Rev-2.

In addition, lenders are required to document the methodology used to review the TPO's, the result of each review, and any corrective action taken as a result of the review findings. In addition, a report of the quality control review and follow-up that includes the review findings and actions taken, and the procedures used as specified in HUD Handbook 4060.1 Rev-2 (such as the percentage of loans reviewed, basis for selecting loans, and who performed the review), must be retained by the lender for a period of two years. Quality control review records must also be provided to FHA upon request.

FHA Issues Guidance on HECM Counseling Fees

On February 4, 2011, the FHA published Mortgagee Letter 2011-09 (ML 11-09), providing guidance to FHA-approved counseling agencies and HECM lenders on the amount and the waiver of a HECM counseling fee. ML 11-09 is effective 30 days from the date of publication.

HUD previously indicated in Mortgagee Letter 2008-12 (ML 08-12) that a HECM counseling fee of $125 per counseling session is considered reasonable. ML 11-09 overrides this part of ML 08-12 and authorizes counseling agencies to charge more than $125 per session. According to ML 11-09, HECM counseling agencies may establish a fee structure as long as the fee is (a) reasonable and customary, (b) does not exceed a level commensurate with the counseling services that are provided, and (c) is not being charged to pay for the service that is already funded with HUD's grants or other funds. The fee structure must be included in the counseling agency's workplan and must be disclosed to the borrower during intake. In any event, a borrower may not be turned away because of an inability to pay a HECM counseling fee.

ML 11-09 also provides that HECM counseling agencies should not collect a HECM counseling fee at the time of the counseling session if the borrower's income is below 200 percent of the Federal Poverty level. However, counseling agencies may charge such borrowers a HECM counseling fee at the time of loan closing provided the borrower has been advised during the counseling session of the amount of the fee. ML 11-09 also describes procedures for determining the borrower's ability to pay a HECM counseling fee, including the documentation required for the waiver of the fee.

According to ML 11-09, only the actual time spent on providing counseling to the borrower (in person or by telephone) may be recorded on the HECM Counseling Certificate. Time other than actual counseling, such as intake, putting together the information packet, and follow-up may not be included on the HECM Counseling Certificate, but can be included when determining the cost of HECM counseling.

FHA Issues Guidance for HECM Loans with Delinquent Property Charges

On January 3, 2011, the FHA issued Mortgagee Letter 2011-01 (ML 11-01), providing guidance to FHA-approved lenders and servicers on how to handle home equity conversion mortgage (reverse or "HECM") loans with delinquent property charges (i.e., real estate taxes, ground rents, flood and hazard insurance premiums, and special assessments). ML 11-01 applies to HECM loans where the borrower has failed to pay property charges or the lender has made a corporate advance of property charges on behalf of the borrower, or both. ML 11-01 also applies to HECM loans where HUD has previously granted a deferred due and payable status.

According to ML 11-01, HECM lenders must begin to work with the borrower to cure the delinquency as early as possible. Lenders must inform the borrower that the loan is delinquent within thirty (30) days of the first missed payment for property charges. A lender may not submit a due and payable request to HUD until the lender exhausts all loss mitigation options. Available loss mitigation options include, but are not limited to:

- Establishing a repayment plan (pursuant to a repayment schedule provided by ML 11-01);
- Contacting a HUD-approved Housing Counseling Agency (HCA); and
- Refinancing the delinquent HECM loan into a new HECM loan, if sufficient equity in the borrower's home to satisfy the existing loan and outstanding property charges is available.

ML 11-01 requires HECM lenders to send a Property Charge Delinquency Letter, providing the borrower with thirty (30) days to respond and cure the default. For loans delinquent as of January 3, 2011, lenders must send the letter by April 29, 2011. For loans that become delinquent after that date, lenders must send the letter as soon as the lender receives notice of a missed payment for property charges. ML 11-01 provides a model letter for use by HECM lenders. Although HUD allows lenders to vary the model letter to a certain extent, the letter must contain the substantive information provided in ML 11-01.

As of January 3, 2011, lenders must report all delinquent loans to HUD (including loans on a repayment plan and loans in a deferred due and payable status). Initially, lenders must submit an Excel file via email to: HECMAdmin@hud.gov by February 7, 2011 pursuant to special formatting requirements provided in ML 11-01. Lenders may report future delinquencies in a monthly Excel file or by manually updating HUD's IACS system as delinquencies occur.

HECM lenders must send a due and payable request to HUD's National Servicing Center if the borrower is unwilling to reimburse the lender for property charges, or if the lender exhausts all available loss mitigation options and the borrower is unable to cure the loan. ML 11-01 requires lenders to include documentation supporting their efforts to resolve the delinquency in the lender's due and payable request. Lenders also must inform the borrower that he or she has thirty (30) days to respond to the due and payable notice. ML 11-01 requires lenders to include certain information in the due and payable letter to the borrower, including all available options to cure the delinquency and avoid foreclosure.

HUD Begins Collecting NMLS Information

HUD announced in Mortgagee Letter 2011-04, January 5, 2011, that it will begin collecting the unique identifiers assigned by the Nationwide Mortgage Licensing System and Registry (NMLS) to individuals and entities participating in the origination of FHA-insured mortgages.

FHA approved mortgagees and their employees must comply with the NMLS registration requirements of the states and entities with jurisdiction over their activities, and must register in accordance with the guidelines set forth by NMLS.

Additionally, FHA approved mortgagees that act as a sponsor for a third party originator should ensure that their sponsored third party originators obtain and maintain an NMLS unique identifier (NMLS ID), as required by the states and entities with jurisdiction over their activities and in accordance with the registration guidelines set forth by NMLS. HUD will capture NMLS IDs at a number of points in the lender approval and loan origination processes, as described below.

Application for or Renewal of FHA Lender Approval

HUD will collect the NMLS company ID of lenders seeking approval to participate in FHA programs via a new field in the "Application for Federal Housing Administration Lender Approval" (form HUD-92001-A).

HUD will collect the NMLS Company ID for lenders seeking to renew their FHA lender approval via the completion of a new field in the renewal screens in FHA Connection.

Completion of these new fields will become mandatory upon their release for those institutions that possess an NMLS company ID.

Sponsored Originator Registration

As explained in Mortgagee Letter 2010-33, HUD will collect the NMLS company ID of Sponsored Originators via entry by a sponsoring FHA-approved mortgagee in the Sponsored Originator Maintenance screen in FHA Connection.

Loan Processing and Underwriting

Modifications will also be made to FHA Connection to capture the NMLS unique identifiers of parties involved in the origination of a loan submitted for FHA insurance endorsement. FHA-approved mortgagees will be required to complete the following new fields on the FHA Connection case number assignment screen, as appropriate:

- The NMLS ID of the loan officer who took the application from the applicant, and;
- For sponsored third party originator loans, the sponsored third party originator's company name and Taxpayer Identification Number (if applicable).

This information will allow HUD to provide FHA-approved sponsoring mortgagees with Neighborhood Watch performance data for their sponsored third party originators, and will assist in ensuring that participants in FHA loan transactions comply with the eligibility requirements governing participation in FHA programs.

Entry of the name and NMLS ID of a loan officer is optional until March 31, 2011. For all case numbers assigned on or after April 1, 2011, this information must be entered in accordance with the following guidelines:

- The loan officer's first and last name are required, and
- If registered in NMLS, the loan officer's NMLS ID is required.

Finally, changes have been made to form HUD 92900-A, "HUD/VA Addendum to Uniform Residential Loan Application," to capture the company name, Taxpayer Identification Number and NMLS Id (if applicable) of a sponsored third party loan origination company. Mortgagees may obtain the revised form at http://www.hud.gov/offices/adm/hudclips. The revised form 92900A (dated 9/2010) must be used for all loan applications taken by a sponsored originator. For loan originations not involving a sponsored originator, FHA-approved mortgagees may use the prior version of the 92900-A (dated 5/2008) until January 1, 2011.

Non-compliance with NMLS Registration Requirements

Under the Helping Families Save Their Homes Act of 2009 (Pub.L. 111-22), the failure of an FHA-approved lender to comply with requirements of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 4101-5116) and applicable state law is cause for withdrawal of FHA lender approval or loss of authorization to participate in FHA lending programs. Therefore, HUD encourages mortgagees to comply with applicable federal and state requirements governing NMLS licensing and registration. For more information on you state's NMLS requirements and implementation plans, please visit: http://mortgage.nationwidelicensingsystem.org.

New Financial Requirements for HMBS

On January 7, 2011, Ginnie Mae announced its implementation of increased base net worth requirements for Home Equity Conversion Mortgage-Backed Securities ("HMBS") Program participants. The new capital requirements have been increased to $5 million base net worth plus an additional net worth calculation of one percent of the aggregate amount of the Issuer's Remaining Principal Balance outstanding and available commitment authority to issue securities.

Ginnie Mae has also instituted a new liquid asset requirement. HMBS Issuers are now required to maintain liquid assets of 20 percent of the Ginnie Mae required net worth.

Additionally, Ginnie Mae has adopted an institution-wide capital requirement to ensure that Issuers have sufficient capital to manage their financial risks. The capital requirements are based on institution type.

Existing approved Issuers have until October 1, 2011 to meet the new financial requirements. New applicants to the Ginnie Mae program are required to meet the new net worth requirements effective January 7, 2011.

Ginnie Mae will institute a new minimum servicing fee margin of 36 basis points, which includes six basis points for the Ginnie Mae guarantee fee. Details and effective dates for this change will be published some in the future.

State Law Updates

S.A.F.E. Act Updates

On January 31, 2011, the federal banking and credit union agencies announced registration requirements for bank loan originators through the NMLS. The S.A.F.E. Act, enacted as part of the Housing and Economic Recovery Act of 2008 required all states to enact or augment within one (or two) years state loan officer licensing requirements to minimum federal standards. The S.A.F.E. Act also required the federal banking agencies to establish registration requirement for bank loan officers. The S.A.F.E. Act, thus, in effect, established a "dual" loan officer licensing and registration system, one for non-bank loan officers, and another less onerous system for bank loan officers.

Currently, there is a movement under way in the mortgage industry to make state licensed loan originators more transferable into a bank setting, and *vice versa*, as well as to make it easier for state licensed loan originators to enter into new states as a licensee provisionally while state specific requirements and criteria are satisfied.

The minimum S.A.F.E. Act requirements for non-bank loan officers include a background check, experience and education and testing requirements, financial responsibility and fingerprinting. The minimum standards for licensing and registration as a State-licensed loan originator shall include the following: (1) the applicant has never had a loan originator license revoked in any governmental jurisdiction; (2) the applicant has not been convicted of, or pled guilty or *nolo contendere* to, a felony in a domestic, foreign, or military court: (A) during the 7-year period preceding the date of the application for licensing and registration; or (B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering; (3) the applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently within the purposes of the S.A.F.E. Act; (4) the applicant has completed the pre-licensing education requirement; (5) the applicant has passed a written test that meets the test requirement; and (6) the applicant has met either a net worth or surety bond requirement.

The federal banking agencies must, at a minimum, furnish or cause to be furnished to the NMLS information concerning the employee's identity, including: (A) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and (B) personal history and experience, including authorization for the NMLS to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction.

The state regulatory agencies crafted a "model" S.A.F.E. Act law for state legislatures to adopt and most states enacted S.A.F.E. Act related legislation in 2009 and 2010. HUD reviewed the "model" S.A.F.E. Act and indicated that if enacted by the states, that such would meet the requirements of the federal S.A.F.E. Act.

HUD Issues Final S.A.F.E. Act Rule

On June 30, 2011, HUD issued its final rule implementing the S.A.F.E. Act. After receiving over 5,000 comments on its proposed rule, which was issued on December 15, 2009, HUD issued its long-anticipated final rule which sets forth and clarifies minimum standards for the licensing and registration of mortgage loan originators. The rule also provides guidance regarding the standards that will be used to determine whether states have in place laws and regulations that are in compliance with the S.A.F.E. Act.

Pursuant to the Dodd-Frank Act, the authority and responsibility delegated to HUD under the S.A.F.E. Act will be transferred to the new Consumer Financial Protection Bureau ("CFPB") on July 21, 2011.

There are significant differences between the final and proposed rules, certain of which are summarized briefly below, along with other key provisions of the final rule. It is important to note that HUD's final rule establishes and clarifies minimum standards and states may enact legislation and regulations that exceed the federal minimum requirements.

Exemptions

The proposed rule provides that certain individuals, including the following are not required to be licensed under the S.A.F.E. Act: individuals who offer and negotiate terms of a residential mortgage loan with or on behalf of a family member, an individual who only offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence, and a licensed attorney who only negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of a client. HUD indicates in its final rule that it stands by its original position that these activities do not trigger licensing requirements under the S.A.F.E. Act. However, rather than include such activities in the rule, HUD created an appendix that includes a list of activities that HUD believes do and do not trigger S.A.F.E. Act licensing requirements. See Appendix A of the Rule, Examples of Mortgage Loan Originator Activities.

In response to comments requesting that HUD establish a de minimis exemption from the S.A.F.E. Act licensing requirements, HUD indicates in its final rule that it has no authority to establish such an exemption.

Loan Modifications and Refinance Transactions

In its proposed rule, HUD requested comments regarding whether individuals engaged in loan modification activities should be subject to the S.A.F.E. Act licensing requirements. HUD's position in the proposed rule was that loan modification activities are substantially similar to origination activities (i.e. negotiating terms and rates of a mortgage loan) and considered requiring such individuals to be licensed. However, in the final rule, HUD has chosen not to include individuals who engage in loan modifications among those requiring a license and deferred the issue to the CFPB, which under the Dodd-Frank Act has independent authority to regulate loan modification and servicing practices.

HUD clarifies, however, that individuals engaged in refinance transactions are subject to licensing under the S.A.F.E. Act.

Felony Convictions

In response to comments stating that the prohibition on issuing licenses to individuals convicted of felonies within the preceding 7 years may significantly limit employment opportunities, HUD refuses to eliminate such a limitation stating that it is beyond HUD's authority to do so, as it is a statutory prohibition under the S.A.F.E. Act.

Pardoned and Expunged Convictions

In its final rule, HUD revises its position as stated in its proposed rule regarding pardoned and expunged convictions to provide that such convictions do not ‘‘in themselves’’ render an individual ineligible from licensing under the S.A.F.E. Act. HUD also indicates, however, that a state supervisory authority may consider the underlying conduct of a pardoned or expunged conviction when making a determination regarding an applicant's financial responsibility, character, and general fitness.

Credit Reports

In response to comments that credit scores should not be a licensing requirement, HUD responds by stating that the S.A.F.E. Act requires an individual to authorize the NMLS to obtain a credit report on such individual, and HUD's rule reflects such requirement. HUD has left it up to the states to determine whether to use a credit score that appears in a credit report as a factor when considering an applicant's overall character and fitness.

State License Reciprocity

In response to comments that HUD should require states to offer reciprocity or a streamlined licensing process for individuals who already hold a loan originator license in another state, HUD states that the S.A.F.E. Act sets the minimum requirements for the licensing of "loan originators" and does not allow HUD to set a maximum requirement or preempt state law requirements. However, while acknowledging that there will inevitably be differing approaches among states, HUD indicates that it will seek to promote uniform minimum standards in accordance with its overall responsibility for interpretation, implementation, and compliance with the S.A.F.E. Act.

Loan Processors and Underwriters

Commenters requested clarification regarding the licensing requirement for loan processors and underwriters. HUD states that loan processors and underwriters are not required to obtain a loan originator license under the S.A.F.E. Act when such individuals perform clerical or support duties at the direction of and subject to the supervision and instruction of either a state-licensed loan originator or a registered loan originator. HUD further clarifies that nothing in the S.A.F.E. Act or in HUD's final rule requires that the loan processor or underwriter be directly or immediately supervised by a licensed or registered loan originator. However, the rule further states that the S.A.F.E. Act's usage of functional terms (i.e., "at the direction of and subject to the supervision and instruction of a loan originator") make clear that there must be an actual nexus between the licensed or registered loan originator's direction, supervision, and instruction and the loan processor or underwriter's performance, as opposed to a mere nominal relationship on an organizational chart. HUD's rule further provides that an actual nexus exists when the supervisory licensed loan originator (1) assigns, authorizes, and monitors the underwriter's performance of clerical and support duties or (2) the supervisory licensed or registered loan originator exercises traditional supervisory responsibilities, including, but not limited to, the training, mentoring, and evaluation of the loan processor or underwriter employee.

The final rule became effective August 29, 2011.

NMLS Call Reports

On March 15, 2010, based on apparent authority provided under the federal S.A.F.E. Act, the State Regulatory Registry LLC (which is the entity established by Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators to administer the Nationwide Mortgage Licensing System and Registry (or "NMLS")), proposed to implement a Mortgage Call Report (MCR) requirement. Comments were due May 19, 2010.

The MCR requires state licensed mortgage companies and servicers to submit quarterly reports through the NMLS concerning their mortgage operations and financial condition. The proposal as adopted requires the first reports to be submitted in May 2011. The MCR is comprised of a Residential Mortgage Loan Activity Report (or "RMLA"), and a Financial Condition Report (or "FCR"). Each reportable entity must submit residential mortgage loan activity data for each state in which an entity is licensed.

The proposal noted that "… failure to submit the [MCR] within 45 days of the end of the quarter will result in a deficiency placed on the licenses or registrations held by the company and may result in a state regulatory action. Such deficiencies will prevent license or registration renewal."

The purpose of the MCR is to provide timely, comprehensive and uniform information concerning the financial condition of licensed mortgage companies, their mortgage loan activities and information on their mortgage loan originators. The development of the MCR is based upon and modeled after Call Reports required of depository institutions and seeks to replace and standardize individual financial and activity reports currently required by state regulators. Please note, however, that the advent of the MCR does not absolve licensed mortgage companies from submitting other written annual reports as currently may be required under various states' mortgage banking statutes and regulations.

The RMLA is broken down into categories, including reverse mortgages, and sub-categories, including loan amount, LTV ratio, application date, broker fees and lender fees, among many other detailed categories. The FCR requires the completion of an unconsolidated balance sheet, income statement and statement of cash flows, with supporting schedules for each such section of the FCR.

A company licensed in multiple states will complete a separate RMLA for each state in which it is licensed. Although reported quarterly, information should be reported on a year-to-date basis.

All company filings are confidential and will not be made public by the NMLS. However, such information will be available to state mortgage regulators under the system's information sharing protocols. State, regional and national aggregated data is considered public information and may be made available by NMLS or state regulators.

Additional information on the original proposal may be found at:

http://mortgage.nationwidelicensingsystem.org/news/ProposalsForComment/Public%20Comment%20Request%20for%20NMLS%20Call%20Report.pdf

Additional information on the MCR and FAQs relating thereto may be found at:

http://mortgage.nationwidelicensingsystem.org/slr/common/mcr/Pages/default.aspx

State Law Issues

State Mortgage Related Legislation and Regulatory Developments in 2011

California

Existing California law prohibits the issuance of a mortgage loan originator license or a license endorsement to act as a mortgage loan originator if the applicant for a license or license endorsement has been convicted of, or pled guilty or *nolo contendere* to, a felony during the 7-year period preceding the date of the application for

licensing or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

California Senate Bill 217 provides that an expunged or pardoned felony conviction does not require denial of a license or license endorsement but would authorize the consideration of the underlying crime, facts, or circumstances of the expunged or pardoned felony conviction when determining whether to issue a license or license endorsement.

California Senate Bill 217 authorizes a person exempt from the provisions of the California Finance Lenders Law to apply to the Commissioner of Corporations for an exempt company registration for the purpose of sponsoring one or more individuals required to be licensed as mortgage loan originators under the federal S.A.F.E. Act if specified requirements are met, including that the mortgage loan originator is covered under an exclusive written contract with, and originates mortgage loans solely on behalf of, the exempt person. California Senate Bill 217 amends provisions of law to require an exempt person to comply with all rules and orders that the Commissioner deems necessary to ensure compliance with the federal S.A.F.E. Act and requires an exempt person to pay an annual registration fee established by the commissioner. California Senate Bill 217 authorizes a licensed mortgage loan originator who is an insurance producer to originate loans on behalf of an exempt person or on behalf of a licensed finance lender that originates loans for an exempt person.

Florida Amends Provisions in the Florida Mortgage Brokerage and Lending Act

Effective July 1, 2011, Florida has amended several provisions found in the Mortgage Brokerage and Lending Act (Chapter 494 of the Florida Statutes). Among the changes are new definitions for “contract loan processors” (licensed loan originators who act as independent contractors for a mortgage broker or mortgage lender and who engage only in loan processing), “in-house loan processors” (individuals who are employees of a mortgage broker or mortgage lender who engage only in loan processing), and “loan processing.” Moreover, the definition of “loan originator” no longer expressly includes an individual who “processes a mortgage loan application.”

Under the new provisions, an exemption from the mortgage lender and broker licensing laws has been added for persons who perform only real estate brokerage activities and are licensed or registered in Florida as such, unless compensated by a lender, a mortgage broker, or other loan originator or by an agent of the same. Also, the penalty provisions have been amended to hold certain persons (e.g., mortgage lenders, mortgage brokers, principal loan originators, and branch managers) responsible for the actions of in-house loan processors.

Under Section 494.00331, which is entitled “Loan originator and loan processor employment,” the loan originator requirements do not apply to a contract loan processor who has a declaration of intent (on the proper form) to act solely as a contract loan processor on file with the Florida Office of Financial Regulation. This section also includes provisions regarding in-house loan processors, who may not act in such capacity unless they are employees of a mortgage broker or mortgage lender and may only be employed by one such person at a time. Such individuals must work at the direction of, and be subject to the supervision and instruction of, a licensed loan originator.

The good faith estimate disclosure requirement has been modified to require the good faith estimate generally to disclose settlement charges and loan terms; but the requirement that the borrower sign and date the form has been removed. Language has been included to clarify the requirement that the borrower must be provided with an itemized list of the recipient of all fees charged to the borrower at the time a good faith estimate is provided to the borrower.

Georgia Amends Provisions of the Georgia Residential Mortgage Act

Georgia has amended several provisions of the Georgia Residential Mortgage Act (the "Act"), effective July 1, 2011. The definition of mortgage lender is revised to include an entity that holds mortgage loans. The attorney-related exemption from licensure is amended to allow for an exemption for an attorney, only if he or she is an attorney licensed to practice law in Georgia. The bond requirements have been amended to specifically require that each mortgage loan originator be covered by the surety bond of his or her sponsoring licensed or registered mortgage broker or lender. A provision has been added that requires each mortgage broker and mortgage lender licensee, applicant, and registrant to examine the Department's public records before hiring an employee to determine that such individual is not subject to certain cease and desist orders.

Additionally, the penalty provisions have been amended to provide that any person who violates the terms of any order issued pursuant to the licensing law shall be liable for a civil penalty not to exceed $1,000.00 per violation per day unless otherwise agreed to by the department.

New York Creates New Department of Financial Services

Effective October 3, 2011, the New York State Banking Department and the New York State Insurance Department will merge into one regulatory agency known as the Department of Financial Services. The new Department of Financial Services will have three divisions: The Banking Division; The Insurance Division; and a Financial Fraud Investigative Unit. The Department of Financial Services will be lead by Benjamin Lawsky as Superintendant. The banking division and insurance division will each have a deputy superintendant who will oversee operations. The current laws governing the Banking Department will remain intact for the new banking division, except that the new department will have wider authority to investigate fraud. The new regulatory agency was created by the New York State Governor, Andrew Cuomo, as part of the 2011-2012 budget bill, which was enacted on March 31st.

New York Amends Mortgage Loan Servicer Registration Requirement

On August 24, 2011, the New York State Banking Department ("NYSBD") enacted emergency regulations that impact the licensing requirement for Mortgage Loan Servicers. The emergency regulations now require an entity that holds mortgage servicing rights to obtain and maintain a New York Mortgage Loan Servicer Registration, unless exempt. The NYSBD has informally advised that entities that are now required to hold such registration have until October 15, 2011 to submit an application through the NMLS. If an application is submitted by such date, then the entity is permitted to continue conducting business in the state of New York pending review of its application.

The emergency regulations also revised the financial responsibility requirements for New York Mortgage Servicer Registrants. Previously, applicants for a Mortgage Loan Servicer Registration were required to maintain an adjusted net worth of at least 1% of the outstanding principal balance of aggregate mortgages serviced regardless of collateral location, but not less than $250,000. N.Y. Comp. Codes R. & Regs. tit. 3, § 418.12.

The emergency regulations provide that a Mortgage Loan Servicer Registration applicant must maintain a net worth of at least $250,000 plus 0.25% of the outstanding principal balance of aggregate mortgages serviced regardless of collateral location.

Additionally, the emergency regulations adopt a separate requirement for third-party servicers. "Third-party servicer" is defined as a servicer that does not own the mortgage loans or servicing rights, but only performs servicing or sub-servicing for the owner of such loans. N.Y. Comp. Codes R. & Regs. tit. 3, § 418.3(g). For third-party servicers, the net worth calculation is based only on the amount of New York mortgage loans serviced. Accordingly, the net worth requirement for third-party servicers would be $250,000 plus 0.25% of the outstanding principal balance of aggregate mortgages serviced in New York. If an entity acts as both a servicer and a third-party servicer, the entity must maintain a net worth of at least $250,000 plus 0.25% of 1% of the outstanding

principal balance of the non-third-party servicer loans and 0.25% of the outstanding principal amount of the New York mortgage loans for which it is a third-party servicer.

Note that the emergency regulations do not change the requirement that at least 10% of the net worth required must consist of cash, cash equivalents or readily marketable securities.

Additionally, the emergency regulations clarify the definition of net worth. For purposes of the requirement, net worth consists of total equity capital, determined in accordance with Generally Accepted Accounting Principles, at the end of the most recent reporting period for which financial results are available, less: (i) goodwill and other intangible assets (excluding mortgage servicing rights), (ii) assets pledged to secure obligations of a person other than the servicer, (iii) any amounts due from officers or stockholders of the servicer or from a related company, (iv) any amount in excess of the lower of cost or market value of mortgages in foreclosure, construction loans or property acquired through foreclosure, and (v) any other receivables that the Superintendent determines are not collectable.

Finally, the emergency regulations amend the standard for modification or waiver of the net worth requirement. Under the new standard, a waiver may be granted when the servicer services less than $4 million in mortgage loans and does not collect money for taxes or insurance. Previously, the standard was $5 million.

The emergency regulations were effective August 24, 2011 and are valid for 90 days or less. The emergency regulations are currently set to expire November 21, 2011. At the end of the 90 days, the regulations will either be passed permanently or will expire. We have been informally advised by the NYSBD that the regulations will likely be passed permanently.

Utah Revises Rules Regarding Principal Lending Managers and Individuals

The Utah Division of Real Estate ("Division") recently amended its Residential Mortgage Practices and Licensing Rules (the "Rules") in order to clarify the roles of principal lending managers and branch lending managers, and to specify the factors that disqualify an applicant from licensure under the Rules.

The Division added subsection (c) to section R162-2c-201(5) of the Rules, which clarifies that a principal lending manager may not simultaneously serve as a branch lending manager, and that an individual may not serve as the branch lending manager for more than one branch at any given time.

The Division also amended section R162-2c-202 of the Rules, which discusses the licensing qualifications for individual mortgage loan originators and control persons under the Rules. First, the individual may not have been convicted of, pled guilty to, pled no contest to, pled guilty in a manner similar to, or resolved by diversion or its equivalent, any of the following: a felony involving an act of fraud, dishonesty, breach of trust or money laundering; any felony in the seven years preceding the date of application; a misdemeanor involving moral turpitude (or a crime in another jurisdiction that is the equivalent) in the five years preceding the date of application, or; any misdemeanor involving fraud, misrepresentation, theft or dishonesty in the three years preceding the date of application. Second, the individual's license as a mortgage loan originator must not have been revoked by any government regulatory body at any time, unless the revocation was subsequently vacated or converted. Third, the individual must not have had any professional license or registration suspended, canceled or denied in the five years preceding the date of application, if such suspension, cancellation or denial was based on misconduct relating to moral character, honesty, integrity, truthfulness, or competency to engage in the residential mortgage lending business. Fourth, within the five years preceding the date of application, the individual must not have been the subject of a bar by the SEC, the NYSE, or the NASD. Finally, there must not be any permanent injunction entered against the individual by a court or administrative agency on the basis of either (i) conduct or practice involving the business of residential mortgage loans, or (ii) conduct involving fraud, misrepresentation or deceit.

These amendments took effect on May 10, 2011.

State Reverse Mortgage Legislation and Regulation in 2011

California

On September 6, 2011, the Governor Jerry Brown approved Assembly Bill 793. This adds Section 785.1 to the California Insurance Code to prohibits an insurance broker or agent from participating in, be associated with, or employing any party that participates in, or is associated with, the origination of a reverse mortgage, unless the insurance agent or broker maintains procedural safeguards designed to ensure that the agent or broker transacting insurance has no direct financial incentive to refer the policyholder or prospective policyholder to a reverse mortgage lender.

Individuals transacting insurance shall not receive compensation, commission, or direct incentive for providing reverse mortgage borrowers with a non-casualty insurance product that is connected to or a result of the reverse mortgage, except that an agent or broker may offer title insurance, hazard, flood, or other peril insurance, or other similar products that are customary and normal under a reverse mortgage loan.

Prior and existing California insurance statutes provides that all insurers, brokers, agents, and others engaged in the transaction of insurance owe a prospective insured who is 65 years of age or older, a duty of honesty, good faith, and fair dealing. This duty is in addition to any other duty, whether express or implied, that may exist.

Massachusetts

The Massachusetts Division of Banks ("Division") recently adopted new regulations ("Regulations"), 209 CMR 55.00 implementing the reverse mortgage provisions of Chapter 258: An Act Relative to Mortgage Foreclosures ("Chapter 258"), which was signed into law August 8, 2010. The Regulations clarify the opt-in and in person counseling requirements under Chapter 258 and also establish the eligibility, procedures, disclosures and counseling requirements for a reverse mortgage program. The Division proposed the Regulations on September 2, 2011 and held a hearing on September 14, 2011, which was followed by a brief comment period. The final Regulations were released on September 30, 2011 and become effective October 14, 2011.

The Regulations implement the definition of "mortgagor" set forth in Chapter 258. Under Chapter 258, a mortgagor is defined as an applicant for a reverse mortgage who: (1) has a gross income of less than 50 percent of the area median income, as periodically determined by the Department of Housing and Urban Development ("HUD"); and (2) possesses assets, excluding a primary residence, valued at less than $120,000.

The Regulations implement the requirement under Chapter 258 that a mortgagor affirmatively opt in writing for the reverse mortgage loan. The Regulations require the mortgagor to execute a written form ("Opt-in Form") to affirmatively consent to the reverse mortgage loan transaction. The Opt-in Form must be segregated from all other information provided to the mortgagor. Additionally, the content of the Opt-in Form must strictly conform to the sample form set forth in the Regulations. The Opt-in Form must be executed after the mortgagor has completed reverse mortgage counseling through an approved counselor and before the lender issues a written commitment to make the loan.

The Regulations require lenders to use the form ("Required Form") found in 209 CMR 55.06. We note that the language of the Required Form was improved as a result of NRMLA's comments to the proposed Regulations. For example, the Required Form states that a reverse mortgage loan lets the mortgagor use the equity in his or her home as a source of "cash" (rather than "income" as initially proposed) and defines home equity as the "market value" of the home (rather than the "value" of the home). Additionally, as a result of NRMLA's

comments, the Required Form states that the mortgagor will be signing binding legal documents that have legal and financial consequences for the borrower and its "family" (rather than "spouse" as initially proposed). Further, NRMLA's comments led the Division to add the following underlined language to the Required Form: "I understand that my loan balance will increase over time because I will be charged interest and other loan fees. This may substantially deplete the equity that I have built up in my home."

As initially proposed, the Regulations would have allowed a mortgagor that submitted an executed Opt-in Form to elect not to proceed with the reverse mortgage at any time prior to closing by providing oral or written notice to the lender. Additionally, under the proposed Regulations, a mortgagor that opted out would have been entitled to all fees collected by the lender. However, as a result of NRMLA's comments, the final Regulations require a mortgagor to provide written notice to the lender to opt out of a reverse mortgage loan. Additionally, as a result of NRMLA's comments, under the final Regulations, the mortgagor that opts out is entitled all fees paid to the lender, rather than all fees collected by the lender.

The Regulations require mortgagors to complete a reverse mortgage counseling program that has been approved by the Executive Office of Elder Affairs. Additionally, effective August 1, 2012, the Regulations require a mortgagor to receive in person counseling from a counselor employed by an organization whose reverse mortgage counseling program has been approved by the Executive Office of Elder Affairs. A reverse mortgage loan executed with a mortgagor that has not received counseling by an approved counselor is unenforceable.

The counselor must provide the reverse mortgage lender with a written certification that the mortgagor has completed the counseling program before the issuance of the Opt-in Form. For HECM products, the HECM counseling certificate promulgated by HUD can be used to satisfy the written certification requirement under the Regulations. For non-HECM products, the written certification must be substantially similar to the HUD HECM counseling certificate.

The Regulations also set forth certain prohibited practices in connection with reverse mortgage loans. For example, the Regulations prohibit a lender from making a reverse mortgage loan in Massachusetts without having a reverse mortgage program that has been approved by the Commissioner or from making a reverse mortgage loan to a mortgagor that has not received counseling by a third party approved by the Executive Office of Elder Affairs. Additionally, the Regulations prohibit lenders from shifting the burden of determining whether a prospective borrower is a "mortgagor" to the mortgagor. Lenders are prohibited from making false promises to influence, persuade or induce a consumer to sign a reverse mortgage loan application or loan documents. Additionally, lenders are prohibited from pressuring or coercing consumers to sign reverse mortgage loan applications or documents by misrepresenting or omitting crucial information about the terms of the mortgage. The Regulations make it a prohibited practice for a lender to discourage a mortgagor from (i) seeking or obtaining independent legal counsel or legal advice; (ii) including family members in the counseling session; or (iii) otherwise participating in the process. Finally, the Regulations prohibit a lender from engaging in a pattern or practice of failing to make any disclosure to a consumer required by and at the time specified by any applicable state or federal law, regulation or directive. A violation of these practices constitutes grounds for terminating the reverse mortgage program and may constitute grounds for an administrative fine or penalty.

Puerto Rico

On July 29, 2011, the Puerto Rico legislature enacted the Reverse Mortgage Consumer Protection Act ("Act") (Law No. 164). The Act is effective 60 days after its enactment. Among other things, the Act imposes a duty of good faith on reverse mortgage lenders and brokers, requires certain disclosures in connection with a reverse mortgage loan, and establishes a "cooling-off" period for potential borrowers. Importantly, the Act requires all information and documentation related to reverse mortgage loans to be available in both English and Spanish.

Duty of Good Faith

The Act imposes a duty of honesty, good faith and fair treatment on any entity that recommends, processes or sells a reverse mortgage loan for compensation in Puerto Rico. Pursuant to this duty, the Act prohibits certain practices, including the making of a false or misleading statement or omission in connection with a reverse mortgage loan. The Act also prohibits a person from originating a reverse mortgage loan (i) for a an "improper purpose" (which is defined as a purpose that the person had reason to know would be to the detriment of the borrower); (ii) where the person knew or should have known that the borrower did not have legal capacity to do business or did not have a clear understanding of the consequences of the loan; or (iii) where the person knew or should have known that the reverse mortgage loan would be used as a means of financial exploitation of an elderly person under Puerto Rico law.

Borrower Notice

The Act requires lenders to provide borrowers with a written notice explaining the importance of obtaining counseling. This notice must be provided before the lender processes an application for a reverse mortgage loan. Additionally, it must be written in large font (at least 14-point) and contain specific language set forth in the Act.

Spanish Language

The Act states that all informational material and documentation relating to a reverse mortgage loan must be available to the applicant in both English and Spanish. The borrower can select the language in which the materials will be provided, but the lender must have available both English and Spanish versions of these materials.

Borrower Counseling

The Act requires lenders to refer an applicant to a HUD-approved counselor prior to accepting an application for a reverse mortgage loan or any charges from the borrower. The lender must provide the borrower with a list of at least three counselors as well as a checklist containing the 10 topics that must be covered by the counselor under the Act. Additionally, the borrower must provide a certification indicating that it has received counseling from a qualified counselor.

Cooling-Off Period

The Act provides borrowers with a "cooling-off" period of seven days from the time the borrower receives a written offer to make a reverse mortgage loan during which the borrower cannot be compelled to proceed with the loan. Lenders must provide borrowers with written notice of this cooling-off period, contained in a separate document and in at least 12-point type. The Act states that the cooling-off period cannot be waived by the borrower.

Annual Statements

The Act requires lenders to provide borrowers at closing with the name of an employee or agent of the lender that will handle consumer complaints. The lender must update this information annually or whenever there is a change. Additionally, at the end of each calendar year and at the end of the mortgage term, the lender must provide the borrower with an annual account statement, free of charge. The annual account statement must include certain information as set forth by the Act, and must cover the activity during the period since the last statement. Additionally, the annual account statement must be available in both English and Spanish. If the lender that originated the reverse mortgage loan sells the loan, the lender that originated the loan is responsible

for ensuring that the purchasing entity has the capacity to provide all account information in Spanish and to respond to consumer complaints in Spanish.

False or Misleading Representations

The Act prohibits an entity that recommends, processes or sells a reverse mortgage loan for compensation from making potentially false or misleading representations in connection with the reverse mortgage loan. The Act also sets forth a list of prohibited statements.

Agency Authority

The Act authorizes the Office of the Commissioner of Financial Institutions and the Public Corporation for the Supervision and Insurance of Cooperatives of Puerto Rico to establish any regulations necessary for the implementation of the Act. Additionally, these agencies will be responsible for implementing a public education campaign on issues related to reverse mortgage loans.

[i] PLEASE TAKE NOTE: The above materials are only an overview of some of the federal and state laws and regulations that may affect reverse mortgage lending, servicing and investing. These materials are designed to alert the reader to the general provisions of law and regulation that may have a bearing upon the reader's business activities. The materials are not intended to and do not provide legal advice. Most provisions described are paraphrased, and a careful reading of the relevant laws, regulations or cases thereunder may reveal exceptions or different interpretations that might be applicable to particular facts. The materials cover areas in which the proper interpretation of law and regulation can be highly dependent upon particular facts. Accordingly, taking action simply upon the basis of information provided in these materials is not advisable. The materials are not a substitute for consultation with qualified legal counsel regarding the manner in which the laws and regulations referenced herein may be interpreted and apply to particular facts. These materials are for informational purposes only and are not a solicitation and should not be construed as such.