WEINER BRODSKY SIDMAN KIDER PC

2009 NATIONAL REVERSE MORTGAGE LENDERS ASSOCIATION

POLICY CONFERENCE

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Reverse Mortgage Regulatory and Legislative Updates[1]

Federal

FHA Mortgage Letters

Mortgagee Letter 2009-16 (Manufactured Housing) - This Mortgagee Letter provides guidance on manufactured housing eligibility requirements for Federal Housing Administration (FHA) mortgage insurance under Title II of the National Housing Act. The Housing and Economic Recovery Act of 2008 (the HERA) made changes to manufactured housing requirements for new and existing construction.

The certificate of title to the manufactured home must be eliminated or cancelled and proof thereof must be provided to evidence the manufactured home has been officially converted from chattel to real property. Once the manufactured home unit is permanently attached to land, filing a request or application to purge the manufactured home title with the appropriate state or local authority (i.e., Department of Motor Vehicle) is required. Mortgagees must comply with all state or local requirements for proper purging of the title [chattel or other equivalent debt instrument] and the subject property must be classified or taxed as real

[1] PLEASE TAKE NOTE: The enclosed 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.

estate. In short, if the original chattel deed or title is not purged, the property does not have marketable real estate title, and as a result, in the event of a foreclosure, HUD will not accept a conveyance nor pay a claim.

Individual manufactured housing units in condominium projects are now eligible for FHA insurance. Until updated guidance on the processing of condominium project approvals is published, manufactured housing condominium project approval is subject to the requirements of HUD Handbook 4150.1, Chapter 11. The Spot Loan Approval process as defined in Mortgagee Letter 1996-41 is not applicable. All manufactured housing project approval requests must be processed by the Homeownership Center that has geographical authority over the property to be insured.

Mortgagee Letter 2009-11 (Clarification to HECM for Purchase Program) - The HECM for Purchase program allows seniors to use HECM proceeds for the purchase of a new principal residence. Since the publication of Mortgagee Letter 2008-33 (issued by the FHA on October 20, 2008) the reverse mortgage industry sought additional guidance concerning HECM for Purchase transactions. ML 09-11 supersedes ML 08-33 and contains a compilation of guidance issued under ML 08-33 and provides new guidance for the HECM for Purchase program.

Mortgagee Letter 2009-10 (Home Equity Conversion Mortgage Program: Clarification of Home Equity Conversion Mortgage Counseling Issues) - The Mortgagee Letter clarifies several issues regarding HECM counseling requirements for prospective HECM borrowers. Specifically, this ML clarifies and/or reiterates: (a) the FHA requires the prospective borrower to initiate the request for counseling; (b) requirements for lenders to provide a list of counseling agencies to prospective HECM borrowers; (c) requirement for counselors to review and document a client's unique financial situation; and (d) use of the new Certificate of HECM Counseling.

Mortgagee Letter 2009-07 (Loan Limit Increases for FHA-Insured Loans) - This Mortgagee Letter provides information on Federal Housing Administration (FHA) single family loan limits that have changed as a result of the American Recovery and Reinvestment Act of 2009 (ARRA) signed into law on February 17, 2009. These limits are effective for those loans for which credit is approved in calendar year 2009 and will remain in effect until December 31, 2009.

Under ARRA, the national FHA loan limit for HECMs increased from $417,000 to $625,500 (from 100 percent to 150 percent of the conforming GSE single family loan limit). HECM loans closed on or after the date of this Mortgagee Letter are subject to the higher maximum dollar amounts.

In the special exception areas of Alaska, Hawaii, Guam and the Virgin Islands, the maximum claim payable by FHA is 150 percent of the Freddie Mac conforming limits. To avoid potential cases where a claim could be less than the national limit, as adjusted for the special exception areas, HUD had decided not to make the adjustment. Therefore, these few special exception areas will have the same $625,500 limit as all other areas.

[Provisions within the HERA, enacted on July 30, 2009, also provided a permanent change for a single national loan limit for HECM loans tied to the Freddie Mac single family loan limit. According to Mortgagee Letter 2008-35, the national loan limit for HECMs under the HERA was set as $417,000. Mortgagee Letter 2009-07 implemented the increase in the national loan limit for HECMs under ARRA from $417,000 to $625,500 for 2009.]

Mortgagee Letter 2008-38 (Home Equity Conversion Mortgages (HECMs) – Clarification Regarding Borrower's Recourse for Repayment of HECM Loan Debt and Termination of a HECM Mortgage) – The purpose of this Mortgagee Letter was to make clarifications regarding HECM borrowers' recourse for repayment of HECM loan debt and termination of a HECM mortgage. This Mortgagee Letter clarifies that a borrower (or the borrower's estate) may not pay off the HECM loan based merely on the appraised value of the property when the loan balance exceeds the appraised value of the property and the borrower (or the borrower's estate) wishes to retain ownership of the home.

Preemption

On May 22, 2009, President Obama issued a Preemption Memorandum asking all federal agencies to refrain from placing summary statements of preemption in introductory remarks to promulgated federal rules, to only exercise preemption when clear statutory authority exists for such federal preemption of state laws, and to review federal regulations issued over the past ten (10) years to assure that clear statutory authority exists when federal agencies made such preemption pronouncements. The time frame of the review period is especially poignant for the OCC, the regulator of national banks, since it issued pervasive preemption regulations in 2004, which were the subject of criticism by the GAO in a report issued in 2005.

Federal Legislation

The HERA

Congress enacted the Housing and Economic Recovery Act of 2008 (or the "HERA"), and the President signed the Act on July 30, 2008. The Act contains three Divisions – Division A: Housing Finance Reform, Division B: Foreclosure Prevention, and Division C: Tax Related Provisions. Within the Division A, the Housing Finance Reform, there are provisions on GSE Reform, which include the creation of new regulator for the government sponsored enterprises (Fannie Mae and Freddie Mac, or the GSEs), as well as uniform registration and licensing of loan originators, contained within the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the S.A.F.E. Act). Division A of the HERA also contains additions to the federal Truth-in-Lending Act, discussed below. The Foreclosure Prevention Division contains the FHA Modernization Act of 2008, which Act contains changes to Section 255 of the National Housing Act, the authorizing legislation for the HECM program. Some of the Mortgagee Letters referenced above further implement HERA related HECM changes.

TILA

Legislation and Regulation

In July 2008, the Federal Reserve Board published a final rule imposing a number of restrictions on mortgage loans that are not covered under the Homeownership and Equity Protection Act ("HOEPA"), as well as new restrictions applicable to HOEPA loans. Most of the provisions of the new rule become effective on October 1, 2009, except that the recently enacted federal housing legislation (under the HERA) provides that the Board must promulgate rules for the initial disclosures for closed end credit by July 2009.

The rule defines a new category of mortgage loans known as "higher-priced mortgage loans," and imposes additional requirements and restrictions on such loans. Reverse mortgages, however, are not included with the definition of a "higher-priced mortgage loan."

The rule, nevertheless, creates other requirements and prohibitions that apply to all mortgage loans, including reverse mortgages, such as restrictions on influencing appraisers, servicing requirements and restriction on advertising.

Appraisal Rules

No creditor, mortgage broker or affiliate of a creditor or mortgage broker may, directly or indirectly, coerce, influence or otherwise encourage an appraiser to misstate or misrepresent the value of the dwelling in connection with a mortgage loan secured by a consumer's principal dwelling.

New Servicing Rules

Servicers must provide an accurate statement of the total outstanding balance that would allow the consumer to pay off the debt in full as of a certain date within a reasonable time after receiving a request for the payoff amount from the consumer or a person acting on the consumer's behalf. Five business days will be considered a reasonable time period to respond in most circumstances.

New Advertising Rules

Using the Board's Section 129(l)(2) authority, the rule designates the following seven advertising practices as deceptive or misleading: (1) using the word "fixed" to refer to rates, payments or the credit transaction in an advertisement for a variable rate transaction or other transaction where the advertised rate may increase, unless certain disclosure requirements are satisfied; (2) making a comparison between an actual or hypothetical consumer's current credit payments or rate and any payment or simple annual rate available under the advertised product for less than the term of the loan, unless certain disclosure requirements are satisfied; (3) stating that a product is a "government loan program", "government-supported loan" or is otherwise endorsed or sponsored by a federal, state or local government entity, unless the advertisement is for an FHA loan, VA loan or similar loan program that is endorsed or sponsored by a federal, state or local government entity; (4) using the name of the consumer's current lender when the

advertisement is not sent by or on behalf of the consumer's current lender, unless the advertisement appropriately discloses the name of the party making the advertisement and that the party is not affiliated with or working for the current lender; (5) making claims that a mortgage product will eliminate debt or result in a waiver or forgiveness of a consumer's existing loan with another creditor; (6) using the term "counselor" to refer to a for-profit mortgage broker or creditor, its employees or persons working for the broker or creditor that are involved in offering, originating or selling mortgages; and (7) providing information about some trigger terms only in a foreign language but providing information about the other trigger terms or required disclosures only in English in the same advertisement.

The new rule also provides (under the Board's more general Section 105 authority) that advertisements require more complete disclosures regarding rates and payments in a clear and conspicuous manner. The new requirements are intended to regulate the disclosure of rates and payments to ensure that low promotional or teaser rates or payments are not given undue influence.

New Early Disclosures

The new rule provides that initial closed end credit TIL disclosures that must be provided within three business days of application, and this rule will apply to any closed end mortgage transaction secured by a consumer's dwelling and subject to RESPA. The current disclosure requirement applies only to closed end RESPA-covered loans to acquire or initially construct a consumer's dwelling (i.e., purchase money loans). [There are current separate early TILA disclosures required under Regulation Z for open-end credit secured by the consumer's primary dwelling, and these open-end early disclosure rules continue to apply.] In transactions subject to the new closed end initial TIL disclosure requirement, a consumer may not be charged an upfront fee, other than a bona fide and reasonable fee to obtain a credit report, prior to the consumer's receipt of the required disclosures.

These new rules were proposed in July 2008, however, due to provisions contained within the HERA, the effective date was moved up, and the new rules become effective July 30, 2009.

Under the new rules, a creditor must provide an early closed end TIL disclosure within three days of an application, and at least seven business days prior to closing. If any material disclosures in the disclosure change (outside of TILA tolerance) the creditor must provide re-disclosure of the early TIL disclosures at least three business days prior to closing.[2] For purposes of determining if the annual percentage rate is no

[2] Two different definitions of "business day" will apply to the revised disclosure requirements. Regulation Z has a general and a more specific definition of "business day". The general definition of "business day" is a day on which a creditor's offices are open to the public for carrying on substantially all of the creditor's business functions. Under the MDIA Rule, the general definition will continue to apply to the requirement to deliver or place in the mail early disclosures no later than three business days after receipt of an application. Using the general "business day" definition provides for consistency with RESPA. Under RESPA, a Good Faith Estimate of settlement charges must be delivered or placed in the mail within three business days after receipt of an application, and the same definition of "business day" applies to the Good Faith Estimate.

longer accurate under Section 226.22, the annual percentage rate as of consummation should be compared to the annual percentage rate in the most recent disclosures provided to the consumer.

RESPA Reform

On March 19, 2008 the Department of Housing and Urban Development ("HUD") once again proposed amendments to the Real Estate Settlement Procedures Act ("RESPA") intended to simplify and improve the process of obtaining mortgages and reducing consumer settlement costs. The proposed rule calls for a number of changes, including:

- Creating the concept of a Good Faith Estimate ("GFE") Application.

Under the more specific definition, a "business day" is all calendar days except Sundays and legal public holidays. Currently the more specific definition applies to the right to rescind and to the pre-consummation disclosure for loans subject to the TILA reverse mortgage disclosure rules (i.e., the TALC disclosure). The MDIA Rule will apply the more specific definition to both the seven-business-day waiting period applicable to the early disclosures and the three-business-day waiting period applicable to the corrected disclosures. (The Board had proposed to apply the general definition of "business day" to the seven-business day waiting period. The Board decided to use the more specific definition in order to provide for consistency among creditors in the length of the waiting period.)

Note there is a difference in the application of the three-business-day mailing rule applicable to the imposition of a fee (other than a credit report fee) after receipt of the early disclosures and the three-business-day waiting period between receipt of the corrected disclosures and consummation. If the early disclosures are delivered in person to the consumer a fee (other than a credit report fee) may be imposed any time after delivery. If the disclosures are placed in the mail a fee (other than a credit report fee) may be imposed after the consumer actually receives the disclosures or, in all cases, after midnight on the third business day following mailing. Examples set forth in the Commentary provide that, assuming there are no legal public holidays (a) if early disclosures are mailed on Tuesday, a fee (other than a credit report fee) may be imposed after midnight on Friday, and (b) if a consumer receives corrected disclosures on Monday, consummation may occur on Thursday (consummation does not have to be delayed until after midnight on Thursday).

The United States Department of Housing and Urban Development amended Regulation X, the RESPA rule, in November 2008 to impose a similar fee limitation effective January 1, 2010. Under the Regulation X amendment, a loan applicant may not be charged more than a fee to obtain a credit report before the applicant receives a Good Faith Estimate of the settlement charges under RESPA. If the Good Faith Estimate is mailed, the loan applicant is deemed to receive the disclosure three calendar days after mailing, exclusive of Sundays and legal public holidays set forth in 5 USC Section 6103(a). While the mailing rule applicable to fee restriction under RESPA calculates "calendar days" in a manner that is the same as the specific definition of "business day" that is used for the mailing rule applicable to the fee restriction under TILA, there may be a difference between TILA and RESPA regarding when a fee can be imposed when relying on the respective mailing rules. As noted above, the Commentary added by the MDIA provides that when relying on the mailing rule, a fee (other than a credit report fee) may not be imposed until after midnight on the date that the consumer is deemed to receive the early disclosures. Regulation X does not expressly provide that when relying on the mailing rule a fee (other than a credit report fee) may not be imposed until after midnight on the date that the consumer is deemed to receive the Good Faith Estimate. Regulation X simply provides that a fee (other than a credit report fee) may not be imposed until after the consumer receives the Good Faith Estimate.

- The GFE Application would not be an application for a federally related mortgage loan under RESPA, but it would trigger the need to provide the applicant with a GFE. The following information would constitute a GFE Application: name, Social Security Number, property address, monthly income, applicant's best estimate of the property value and loan amount sought.

- Improving and standardizing the GFE to make it easier to use for shopping among settlement service providers. The GFE would be expanded to a four-page document and would include additional disclosures.

- Ensuring that page one of the GFE provides a clear summary of the loan terms and total settlement charges so that borrowers will be able to use the GFE to comparison shop among loan originators for a mortgage loan.

- Providing more accurate estimates of costs of settlement services shown on the GFE. The amounts disclosed for settlement services would have to remain available for 10 business days from delivery of the GFE, subject to certain exceptions. The amount that certain disclosed fees may vary from the GFE to the HUD-1/HUD-1A Settlement Statement ("HUD-1") would be subject to tolerances.

- In instances where the loan originator permits the borrower to shop for third party services, requiring the loan originator to provide a written list of settlement service providers on a separate piece of paper at the time of the GFE.

- Improving disclosure of yield spread premiums ("YSPs") to help borrowers understand how they can affect their settlement charges. The proposed instructions for completing the GFE seem to suggest that a YSP and discount points cannot be charged on the same transaction.

- Facilitating comparison of the GFE and the HUD–1.

- Ensuring that, at settlement, borrowers are made aware of final loan terms and settlement costs through use of a "closing script." The loan originator must prepare the closing script for the settlement agent to read aloud to the borrower. The settlement agent would be required to provide the borrower with a copy of the closing script. The closing script would have to be available for borrower review 24 hours prior to closing.

- Clarifying the HUD–1 instructions.

- Expressly stating when RESPA permits certain pricing mechanisms that benefit consumers, including average cost pricing and discounts, including volume-based discounts.

- Revising the regulations related to servicing disclosures to reflect statutory changes made to RESPA in 1996.

- Clarifying HUD's current regulations concerning discounts. Specifically, the definition of "required use" was amended in such a way to eliminate builder incentives given to homebuyers who use a builder's affiliates for settlement services, including mortgage loans.

HUD withdrew the "required use" definition, however, the remainder of the rule is slated to become effective January 1, 2010.

HUD has also stated that it intends to seek statutory revisions to RESPA related to civil money penalties for violations of specific sections of RESPA, injunctive and equitable relief for RESPA violations and an expanded statute of limitations for government and private rights of action. HUD has indicated that it will also seek a statutory revision to require delivery of the HUD-1 to the borrower three days prior to closing.

State Law Updates

State Mortgage Licensing Updates

The S.A.F.E. Act

The HERA includes within it the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, known as the S.A.F.E. Act. Under the S.A.F.E. Act, loan originators must be licensed, if employed by a state licensed mortgage company, or registered, if employed by a state or federally chartered depository institution, or a subsidiary of such an institution that is regulated by a federal banking agency. The originator must also maintain a unique identifier through a nationwide licensing system.

Under the S.A.F.E. Act, a loan originator is an individual who takes a residential mortgage loan application and offers or negotiates mortgage terms. Administrative and clerical personnel, as well as processors and underwriters, are not considered loan originators, unless they otherwise meet the definition.

State licensed loan originators must meet certain minimum standards, including: they may not have had an originator license previously revoked; they may not have pled guilty or been convicted of a felony during the seven years prior to licensing. If at any time the felony involved fraud, dishonesty, breach of trust or money laundering, they cannot get a license, period. Loan officers must demonstrate financial responsibility, character, and general fitness. They must satisfy pre-licensing educational requirements and pass a written test. They must clear a background check, which includes submitting fingerprint cards, personal history and experience information, and an authorization to obtain a credit report. They must meet either net worth or a surety bond requirement, or pay into a state fund.

The Federal banking agencies are tasked with developing, implementing, and maintaining a system for registering loan originators employed by depository institutions and their subsidiaries. The system is to be operational within one year.

HUD is required to develop a licensing and registration system for any state that fails to establish its own system within one year, or two years for states where legislatures meet biennially. HUD may extend for up to two years the timetable for a state to enact a licensing law and registration procedures, if HUD determines that the state is making a good faith effort to establish a licensing law and procedure consistent with S.A.F.E. Act. States generally have one year to implement a S.A.F.E. Act compliant licensing regime that meets certain S.A.F.E. Act minimum requirements. For any state that does not have a requisite loan officer licensing regime in place within the mandated time period, then the HUD regime will apply there.

The S.A.F.E. Act encourages states to establish a nationwide licensing system and registry through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. State regulatory bodies already have established such a database, called the Nationwide Mortgage Licensing System, and many states currently participate, or have announced that they will participate in the NMLS this year.

The Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators also have created a working group, which has prepared a model state law for the implementation of the S.A.F.E. Act. The CSBS/AARMR working group is drafting additional language for this comprehensive state mortgage originator licensing law. The additional language should be distributed to the state regulators soon.

Washington

Legislature Passes Bill To "Close Loophole" in Regulation of Mortgage Lenders.

On March 19, 2008, Washington's Governor Christine Gregoire signed a bill into law that altered the licensing scheme governing mortgage lenders in Washington by amending the Consumer Loan Act ("CLA") and the Mortgage Broker Practices Act ("MBPA"). The bill was effective as of June 12, 2008.

Previously, many mortgage lenders were not subject to Washington's licensing requirements due to exemptions from the MBPA, including those for Fannie Mae or Freddie Mac approved entities, and the 12% interest rate trigger under the CLA.

The bill amended this licensing scheme by: (i) Applying CLA licensing requirements to loans at all rates, not just those that exceed the state usury limits; and (ii) Eliminating the activity of "making residential mortgage loans" from the definition of Mortgage Broker under the MBPA.

Accordingly, entities making mortgage loans in Washington must obtain a license under the CLA, and those who wish to broker mortgage loans must obtain a license under the MBPA, although the CLA provides for exemptions for such entitles as banks, and also allows CLA licensees to broker loans.

Even prior to these legislative amendments, the CLA contained purported requirements for "simple interest" on loans made by CLA licensees. Such requirements arguably are preempted both by the federal rate preemption statute, and with respect to FHA insured loans, the National Housing Act. In any event, the new Washington reverse mortgage legislation discussed below clarified the ability of CLA licensees to make reverse mortgages in the state of Washington.

NMLS

State mortgage regulators across the U.S. have been working since 2003 to develop a nationwide licensing system for the residential mortgage industry to improve supervision of the mortgage industry, streamline the licensing process for mortgage companies and professionals, and enhance consumer protection. The Conference of State Bank Supervisors ("CSBS"), the American Association of Residential Mortgage Regulators ("AARMR"), and the Financial Industry Regulatory Authority launched the NMLS on January 2, 2008. The Nationwide Mortgage Licensing System ("NMLS") is a web-based system that allows state licensed mortgage lenders, mortgage brokers, and loan officers to apply for, amend, update or renew a license online for all participating state agencies using a single set of uniform applications. Provisions of the HERA, enacting the SAFE Act, encourage state regulators to continue to develop and utilize this system for the licensing and registration of loan originators.

SAFE Act Related State Legislation

To date, the following states have enacted legislation implementing the SAFE Act: Arkansas, Colorado, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maryland, Mississippi, Montana,

Nebraska, New Jersey, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Most laws enacted to date provide that effective dates will take place next year (some in January, others in July of 2010) for "Loan Originators" licensing requirements. Twenty-two other states have SAFE Act-related legislation pending. [Also, under the federal SAFE Act, the federal banking agencies also must promulgate rules requiring the registration of bank employed loan originators.]

Prior to the enactment of the state SAFE Act laws, approximately thirty (30) states required loan officers to be licensed in some shape or form. Each states' SAFE Act laws are designed to meet the minimum requirements under the federal SAFE Act that states enact laws requiring "Loan Originators" to be licensed. However, the laws vary from state to state. Moreover, under the federal SAFE Act, the definition of a Loan Originator generally includes an individual who: (i) takes a residential mortgage loan application; and (ii) offers or negotiates terms of a residential mortgage loan for compensation or gain. [A residential mortgage loan is defined such that it generally includes reverse mortgages.] The model SAFE Act legislation, that the CSBS and ARRMR promulgate for states to consider, contains a broader definition of a "Loan Originator" to include an individual who: (i) takes a residential mortgage loan application; or (ii) offers or negotiates terms of a residential mortgage loan for compensation or gain. Most states have adopted the broader definition of a "Loan Originator" in their SAFE Act legislation.

Some states SAFE Act related legislation contains substantive amendments to other provisions of state mortgage lending regulations, such as disclosures and fee requirements. As least two states (New Hampshire and New Mexico, discussed below) provide in their SAFE Act related legislation substantive amendments relating to reverse mortgages. These provisions are discussed below.

Reverse Mortgage Specific State Legislation

Reverse mortgage transactions are residential real estate secured transactions, and therefore most, if not all, state (and federal) laws that apply to "forward" mortgage transactions generally also will apply to reverse mortgage transactions. Some states have *specific* statutory requirements for reverse mortgage transactions or originators, and those states include: California, Massachusetts, New York, North Carolina, Tennessee, and most recently, Rhode Island and Washington.

New York's reverse mortgage rules specifically exempt FHA-insured HECM loans. Massachusetts reverse mortgage laws do not require originators to obtain a separate regulatory approval at the entity level. However, Massachusetts does require originators to submit their proposed reverse mortgage loan program(s) to the state regulator for approval before they can be offered to seniors.

California has no separate reverse mortgage licensing requirement, however, California law imposes requirements upon reverse mortgage transactions and originators, including prohibited practices, such as limits on "cross selling" or "tying" of annuities, and foreign language and other disclosure requirements.

Texas also has very onerous requirements for reverse mortgage programs; however, it does not have a separate reverse mortgage approval requirement.

Other states with laws or regulations that address reverse mortgage in some way include Arkansas, Colorado, Delaware, Hawaii, Iowa, Maine, Missouri, Nebraska, South Carolina, South Dakota, West Virginia and Wisconsin.

Nevertheless, reverse mortgage originators need to be aware that, unless an exemption applies, state "forward" mortgage-lending laws also apply to those entities or persons conducting reverse mortgage operations. Generally, state mortgage lending laws require: (i) loan disclosures, (ii) certain origination practices, including fee limitations, (iii) protections with regard to so called "high cost home loans," or predatory lending; and/or (iv) regulatory approvals, such as company and loan officer licensing.

Below are recent updates on a few states that recently have enacted reverse mortgage specific legislation.

2008 State Reverse Mortgage Legislation

Delaware

Delaware HB 475 amends the Licensed Lenders Act and the Mortgage Loan Brokers Act to provide that a mortgage lender or mortgage broker licensee may not accept any fee in connection with a reverse mortgage loan, other than an application fee or a credit report fee, property appraisal fee, title examination fee or other bona fide third-party fee actually and reasonably paid or incurred by the licensee on behalf of the borrower, prior to receiving a written certification from an independent housing counselor attesting that the prospective borrower has received counseling on reverse mortgage loans that includes the information specified in under the National Housing Act for the FHA-insured home equity conversion (or HECM) program, and such other information as the Commissioner may designate by regulation.

A "reverse mortgage" is defined as a mortgage loan the proceeds of which are disbursed to the mortgagor in one or more lump sums, or in equal or unequal installments, either directly by the lender or the lender's agent, and which requires no repayment until a future time, upon the earliest occurrence of one or more events specified in the reverse mortgage loan contract.

An "independent housing counselor" is defined as a housing counseling agency approved by HUD, or any government agency or non-profit organization that is not affiliated with either the reverse mortgage lender or any other person receiving a fee from the transaction and provides mortgage loan counseling to the public of Delaware regarding the advisability of entering into a reverse mortgage transaction.

The Governor signed the bill on July 9, 2008 and the bill became effective three (3) months from that date, on or about, October 9, 2008. With the recent amendments made to Washington and Rhode Island laws, this raises the count to seventeen (17) states that have specific requirements for counseling in connection with reverse mortgages.

Rhode Island

Rhode Island House Bill 7723 and Senate Bill 2598 substantially amend Rhode Island's reverse mortgage statutes. The measure took effect January 1, 2009. Among other things, this legislation allows a borrower to prepay a reverse mortgage loan without a penalty. However, where the lender has waived all of the usual fees associated with a reverse mortgage loan, the lender may, subject to certain limitations, impose a prepayment penalty. In addition, if the reverse mortgage loan provides for periodic advances, the advances may not be reduced based on any adjustment in the interest rate. Further, the reverse mortgage loan may become due and payable if (a) the home securing the loan is sold or title to the home is otherwise transferred, (b) all borrowers cease occupying the home as a principal residence, (c) the borrower fails to occupy the property because of physical or mental illness and the property is not the principal residence of at least one other borrower for longer than 12 consecutive months, (d) any fixed maturity date agreed to by the lender and the borrower occurs, or (e) an event that is specified in the loan documents occurs and jeopardizes the borrower's home.

The new law also provides that only specified fees, costs, and payments may be charged in connection with the origination and closing of a reverse mortgage loan, and those amounts may be charged only if they are properly disclosed to the borrower. Furthermore, a lender may not require an applicant for a reverse mortgage to purchase an annuity as a condition of obtaining a reverse mortgage loan. Additionally, the borrower is required to complete a reverse mortgage counseling program, and lenders must provide borrowers with a disclosure outlining the advisability and availability of independent reverse mortgage counseling and information services. Moreover, borrowers must be provided with certain additional reverse-mortgage-specific disclosures at least three business days prior to closing. Unless otherwise exempt, all reverse mortgage loan officers must be registered and/or licensed. In addition to any existing right of rescission, a reverse mortgage borrower may not be bound to the reverse mortgage loan for at least three business days after each of the following has occurred: (a) the borrower executed and delivered to the lender of a fully complete reverse mortgage loan application, (b) the borrower delivered the executed counseling certificate, and (c) the borrower received of all required disclosures.

2009 State Reverse Mortgage Legislation

Washington

The Washington State Legislature enacted HB 1311, which creates the Washington State Reverse Mortgage Act. The Governor signed HB 1311, and the law becomes effective on July 26, 2009. The Act regulates reverse mortgage lending practices, establishes financial requirements for certain reverse mortgage lenders, and provide contractual standards and disclosures for certain reverse mortgage loans. HB 1311 also addresses the unintended consequences resulting from the 2008 enactment of SB 6471, which inadvertently called into question the use of compound interest in connection with reverse mortgage loans offered by Washington Consumer Loan Act Licensees. The Act establishes a definition of a reverse mortgage and includes a requirement that, among other things, such a loan may not be made to a person unless they are 60 years of age or above on the date the loan closes.

While the Washington State Reverse Mortgage Act focuses primarily upon "proprietary reverse mortgage loans," the Act also imposes some requirements on FHA-insured home equity conversion mortgage loans (or HECMs). Importantly, if a lender (including HECM lenders) defaults on any reverse mortgage loan term (e.g., failure to make payments to the borrower on a timely basis) and fails to cure the default as specified in the loan documents, the borrower (or the borrower's estate) is entitled to treble damages in addition to other remedies.

A licensee offering proprietary reverse mortgage loans must maintain letters of credit in an amount necessary to fund all reverse mortgage loan requirements or $3 million (whichever is greater), and maintain a minimum capital of $10 million. A licensee may rely on the capital of a parent entity if the parent: (1) has a net worth of at least $100 million and (2) provides a binding written commitment to the licensee to make a minimum of $10 million available to the licensee. These financial requirements do not apply if the licensee fully disburses the proceeds of the proprietary reverse mortgage loans proceeds at the loan closing or only originates proprietary reverse mortgage loans that are sold into the secondary market to an investor with a specified credit rating (there must be a written commitment from the investor to purchase the loans prior to closing, and delivery must be made to the investor within 10 days of the loan closing). Also, a lender may not offer a proprietary reverse mortgage loan product without pre-approval of the product by the Department of Financial Institutions.

The Act imposes additional restrictions on lenders making proprietary reverse mortgage loans, including (but not limited to) a requirement that the lender must allow prepayment without penalty at any time during the term of the reverse mortgage loan, and a requirement to refer the prospective borrower to an independent housing counseling agency approved by HUD for counseling. Additionally, a "reverse mortgage lender" (defined as a licensee under the Washington Consumer Loan Act or a person exempt from licensing pursuant to federal law) is prohibited from engaging in the following actions:

- requiring an applicant to purchase an annuity as a condition of obtaining a reverse mortgage loan;

- offering an annuity to the borrower prior to the closing or before the expiration of the right of the borrower's rescission rights;

- referring the borrower to anyone for the purchase of an annuity prior to the closing or before the expiration of the right of the borrower's rescission rights;

- providing marketing information or annuity sales leads to anyone regarding the borrower, or receiving any compensation for such an annuity sale or referral;

- taking a proprietary reverse mortgage loan application unless the applicant has received a statement advising the prospective borrower about counseling prior to obtaining the reverse mortgage loan within three business days of receipt of the completed loan application; and

· accepting a final and complete application from a prospective applicant or assessing any fees upon a prospective applicant without first receiving a certification that the applicant has received counseling.

Further, a lender (and any other parties that participate in the origination of a reverse mortgage loan) must maintain safeguards to assure that individuals offering reverse mortgages do not require an applicant to purchase insurance or other products as a condition of the loan, and that individuals that originate reverse mortgage loans have no ability or incentive to offer or sell any other insurance or financial product to the borrower.

In addition, the Washington State legislature passed SB 6471 in 2008. Among other things, SB 6471 applied the Consumer Loan Act to all loans made by a Licensee thereunder at any interest rate. As a result, all Consumer Loan Act loans, including reverse mortgage loans, had to be calculated using a simple interest method. There are also additional requirements under the Consumer Loan Act regarding the interest calculations for open-end credit plans. As enacted, HB 1311 now exempts reverse mortgage loans from the compounding interest prohibition, as well as the billing cycle and interest calculation requirements of the Consumer Loan Act. As such, a reverse mortgage loan in Washington State may provide for a fixed or adjustable interest rate, including compound interest.

Vermont

The Vermont legislature recently enacted Vermont House Bill 222 and the Vermont Governor signed this measure on June 1, 2009. Provisions of SB 222 that relate to reverse mortgages will become law effective on July 1, 2009. The bill provides that a financial institution shall not issue a reverse mortgage loan unless it is a lender approved by HUD to enter into a loan insured by the federal government and the reverse mortgage loan complies with all requirements for participation in the HUD HECM or other similar federal reverse mortgage loan program, and the loan is insured by the FHA or other similar federal agency or is a government sponsored enterprise reverse mortgage loan. A “financial institution” includes a bank or credit union organized or regulated under the laws of Vermont, the U.S. or any other state or territory, or a bank subsidiary, a licensed lender, or a mortgage broker.

Under the measure, a “reverse mortgage loan” is defined as a loan wherein the committed principal amount is secured by a mortgage on residential property owned by the borrower, is due upon sale of the property securing the loan or upon the death of the last surviving borrower or upon the borrower terminating use of the real property as a principal residence or upon the borrower’s default, provides cash advances to the borrower based upon the equity or the value in the borrower’s owner-occupied principal residence, and requires no payment of principal or interest until the entire loan becomes due and payable.

Prior to accepting an application for a reverse mortgage loan, a financial institution shall refer the borrower to counseling from an organization that is a housing counseling agency approved by HUD, and shall receive certification from the counselor that the borrower has received in person face-to-face counseling. However, if the borrower cannot or chooses not to travel to a counselor and cannot be visited by a counselor in their home, telephone counseling shall be provided by counseling agencies that are

authorized by the Vermont Department of Banking, Insurance, Securities and Health Care Administration. The counseling certificate must be signed by the borrower and the counselor and include the date of counseling, the name, address, and telephone number of both the borrower and the organization providing counseling, and shall be maintained by the holder of the reverse mortgage throughout the term of the reverse mortgage loan.

Further, a financial institution shall not require a reverse mortgage applicant to purchase an annuity as a condition of obtaining a reverse mortgage loan. A financial institution or a broker arranging a reverse mortgage loan shall not: (i) offer an annuity to the borrower prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement, or (ii) refer the borrower to anyone for the purchase of an annuity prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.

Hawaii

House Bill 1071 passed on May 7, 2009 and requires mortgage servicers, including those that service reverse mortgages, to become licensed. The law is effective January 1, 2010.

2009 Forward Mortgage Legislation Containing Provisions that Affect Reverse Mortgages

New Mexico

Senate Bill 342 is part of a broader SAFE Act related mortgage licensing law. Under the bill, a lender must assess borrower's ability to repay. This provision does not apply to a reverse mortgage that provides a "net tangible benefit" to the borrower. This provision is effective July 31, 2009.

New Hampshire

House Bill 610 is a SAFE Act related bill that also prohibits the payment of "yield spread premiums" in connection with reverse mortgages, and adds a prohibition on so called "cross selling" of other financial services products with a reverse mortgage, similar to the "cross sell" provisions added to the federal HECM law by the HERA.

2009 Pending State Reverse Mortgage Legislation

California

Assembly Bill 329 and Senate Bill 660, as introduced, contained a fiduciary duty (AB 329) and suitability requirements (SB 660) with civil liability imposed for violation of these provisions. These provisions have been removed and substantially revised; and express civil liability provisions removed. A 30-day rescission period contained in AB 329, as introduced, also was removed.

A checklist requirement specifying issues the borrower should discuss with a reverse mortgage counselor has been added to both bills. The checklist advises seniors to discuss the following issues with the agency counselor: (i) how unexpected medical or other events that cause the prospective borrower to move out of the home, either permanently or for more than one year, earlier than anticipated will impact the total annual loan cost of the mortgage; (ii) the extent to which the prospective borrower's financial needs would be better met by options other than a reverse mortgage, including, but not limited to, less costly home equity lines of credit, property tax deferral programs, or governmental aid programs; (iii) whether the prospective borrower intends to use the proceeds of the reverse mortgage to purchase an annuity or other insurance products and the consequences of doing so; (iv) the effect of repayment of the loan on nonborrowing residents of the home after all borrowers have died or permanently left the home; (v) the prospective borrower's ability to finance routine or catastrophic home repairs, especially if maintenance is a factor that may determine when the mortgage becomes payable; and (vi) the impact that the reverse mortgage may have on the prospective borrower's tax obligations, eligibility for government assistance programs, and the effect that losing equity in the home will have on the borrower's estate and heirs.

The bills as currently drafted conflict in the timing of the delivery of the checklist, with one bill (AB 329) allowing the counselor to provide the checklist to the senior if the prospective borrower speaks with the counselor prior to speaking with a lender. SB 660 requires the lender to provide the checklist to the senior prior to the senior attending counseling.

Both bills as currently drafted also amend the timing requirement of the delivery of California reverse mortgage important notice to provide that a lender must provide this notice to a senior prior to the senior attending counseling.

AB 329 also enhances the anti-cross selling provisions that were added to California law with Senate Bill 1609 (2006) which provisions become effective January 1, 2007. Both bills have passed their respective chambers and reside with the other chambers in committees.

California Assembly Bill 1160 amends the foreign language disclosures requirements that were made applicable to reverse mortgages by Senate Bill 1609 (2006). AB 1160 (2009) has been amended several times, is moving in the Assembly, but has not yet passed the Assembly.

Other States

Various reverse mortgage related bills were introduced, but either have not shown much movement, or have died, in the following states: Arizona (HB 2513, omnibus reverse mortgage bill), Massachusetts (Senate Bill 479, introduced in January 2009, no movement since, requires reverse mortgage specific loan officer licensing), Missouri (House Bill 714, introduced in February 2009, in Committee as of May 15th,

provides that a mortgage broker must act in good faith in its relations with a reverse mortgage borrower), and New York (various bills, including measures regarding co-ops, long term care, reverse mortgage programs for low income seniors, housing finance agencies making reverse mortgages, and that reverse mortgage proceeds are not income for purposes of public benefits).

2009 Vetoed State Reverse Mortgage Legislation

Minnesota

Senate File 489 was enacted by the Minnesota legislature, however, the Governor vetoed the bill on May 21, 2009. The bill as passed contained an onerous and amorphous suitability provision (and a companion House File, as introduced, also continued a similar suitably provision with assignee liability). Although the assignee liability provisions was not included in the measure as enacted, the enacted bill did contain a 10-day rescission period as well as significant limits on so called “cross selling” of other financial services products. If the measure had not been vetoed, it is widely believed within the reverse mortgage industry that the measure would have led to substantial curtailment of reverse mortgage lending in the state of Minnesota.