

2009 NRMLA ANNUAL MEETING & EXPO

November 18-20

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San Diego, California

Reverse Mortgage Regulatory and Legislative Updatesⁱ

Federal

FHA Regulations

HUD previously proposed rules, in early 2007, designed to improve the quality of HECM counseling, enabling senior homeowners to make more informed decisions when considering whether to obtain a HECM loan. That proposal would have amended FHA HECM regulations by establishing testing standards to qualify individuals as counselors eligible to provide HECM counseling to prospective borrowers. Additionally, HUD proposed to establish a Roster of eligible HECM counselors, and to provide for their removal for cause. In July 2008, as part of the Housing and Economic Recovery Act of 2008, or the HERA, Congress amended section 255 of the National Housing Act (the "HECM statute") to provide that adequate counseling be provided to prospective HECM mortgagors, and such counseling be provided by counselors who meet certain qualification standards.

On September 2, 2009, HUD finalized regulations regarding the HECM counseling Roster. The final rule adds new Subpart E to Part 206 of the FHA regulations, and conforms FHA regulations to the statutory amendments made to section 255 of the National Housing Act (by section 2122 of the FHA Modernization Act, part of the HERA). The final rule makes five changes to the regulatory language:

1. Automatic placement on the Roster of counselors who passed HUD examination. The final rule provides that HECM counselors who have taken and passed the exam as of the effective date of the final rule (i.e., October 2, 2009) will be automatically included on the HECM counseling Roster.

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2. Reinstatement of counselors removed from Roster. The final rule provides that a counselor who has been removed from the Roster and seeks reinstatement must submit evidence that the deficiencies previously cited by HUD have been addressed and that program improvements have been made that justify reinstatement. The evidence to be provided must be written documentation attesting to the fact that deficiencies previously identified by HUD have been addressed and corrected and that improvements have been made that justify the reinstatement of the counselor.

3. Eligibility of counselors for placement on Roster. The final rule provides that to be eligible for placement on the Roster a counselor must not be listed on the General Services Administration's Suspension and Debarment List, HUD's Limited Denial of Participation List, or HUD's Credit Alert Interactive Response System.

4. Identified period to submit a written appeal. The final rule provides that a counselor shall have thirty (30) days to submit a written appeal of a proposed removal from the Roster.

5. Maximum duration for the period of removal. The final rule provides that a counselor may be removed for a maximum period of one year.

FHA Mortgage Letters

Mortgagee Letter 2009-44

HUD issued Mortgagee Letter 2009-44 (ML 09-44) on October 23, 2009 to clarify the debenture interest calculation for certain types of claims filed with the FHA in connection with HECM loans. HECM claims paid by HUD include interest from the "due date" of the loan until the claim is paid. ML 09-44 clarifies that the due date is defined as the date when the mortgagee notifies HUD that the HECM mortgage became due and payable in full (either because of the mortgagor's death or because the mortgagor no longer holds title to the property) or, if applicable, the date HUD granted approval for the HECM mortgage to become due and payable.

ML 09-44 further provides that, because of various issues involving missing or incorrect information, some HECM claims paid since April 1, 2006, may not have included the correct debenture interest payment. HUD will accept supplemental claims for the correction of those claims, based upon the guidance in ML 09-44.

ML 09-44 also makes clear that HUD expects mortgagees to obtain full property appraisals in connection with HECM claims. Further, ML 09-44 advises that, to ensure eligibility for the full debenture interest allowance, mortgagees must comply with all time frame requirements including the institution of foreclosure, reasonable diligence in prosecution of foreclosure and claim submission.

Mortgagee Letter 2009-42

Mortgagee Letter 2009-42 (ML 09-42, October 19, 2009) addresses sub-servicing of FHA-insured mortgages. The servicing of FHA-insured loans must be performed by a mortgagee that is approved by FHA pursuant to FHA regulations. See 24 CFR §§ 202.5 and 203.502. The FHA regulations do not preclude an FHA approved entity from performing servicing actions on behalf of another FHA-approved

servicer or at the direction of an FHA-approved mortgagee. As stated in Mortgagee Letter 93-03, issued January 7, 1993, all mortgagees that service FHA insured mortgages must be FHA-approved, and this includes sub-servicing mortgagees.

While ML 09-42 does not directly reference HECM regulations, ML 09-42 states that sub-servicers presently are neither specifically identified nor tracked in any FHA system, but that holding mortgagees and servicing mortgagees that decide to use sub-servicing mortgagees must ensure that the sub-servicer is an FHA approved mortgagee. This language in ML 09-42 appears to conflict with informal guidance provided by HUD several years ago. Such guidance provided that HECM sub-servicers be listed in HUD's the Insurance Accounting Collection System (or IACS) as the servicer of record. This appears to have been done, in part, as an administrative convenience to HUD so that, among other things, the sub-servicer could establish an account with HUD that more routinely and efficiently could be debited by the HUD system for payment of the monthly mortgage insurance premiums (or MIP) to HUD on the HECM loans that the sub-servicer administers on behalf of the loan owner or owner of servicing rights. Of course, under HECM regulations, the mortgagee, and not the sub-servicer, ultimately remains responsible for making payments to the HECM borrower. [Further, this informal guidance appears to conflict with Mortgagee Letter 2004-22 which directs mortgagees to notify HUD of changes in the servicer of HECMs, through the IACS system.]

Nonetheless, ML 09-42 goes on to state that, under FHA's regulations, 24 CFR § 203.502, the mortgagee remains fully responsible to HUD for proper servicing, and the actions of the servicer shall be considered to be the actions of the mortgagee. The servicer also is fully responsible to HUD for its actions as a servicer. In turn, the holding mortgagee is responsible for the actions of the sub-servicer, and the sub-servicer is responsible to HUD as an approved mortgagee for its actions in servicing the FHA mortgages.

Again, ML 09-42 does not directly reference HECM regulations, including 24 C.F.R. § 206.121, which provides in the event a mortgagee does not make payments to a senior under a HECM loan, HUD shall investigate. If HUD finds that the mortgagee is unable or unwilling to make all payments required under a HECM, HUD shall the make the payments and seek reimbursement from the mortgagee, or assignment of the HECM from the mortgagee to HUD. Of course, a sub-servicer does not own the loans it administers, nor does it own the servicing rights. Therefore, a sub-servicer could never assign a HECM loan to HUD in these circumstances. While sub-servicers undoubtedly have duties under FHA regulations, HUD also has duties and obligations under the HECM regulations to protect seniors. Merely because HUD cannot legally pursue sub-servicers, when HECM mortgagees do not make payments to HECM seniors, should not dissuade HUD from acting timely and living up to its duties to HECM seniors as mandated and required by HECM regulations.

Mortgagee Letter 2009-34

Mortgagee Letter 2009-34 (ML 09-42, September 23, 2009) established new principal limit factors for HECM loans with case numbers assigned on or after October 1, 2009. Reportedly, the new principal limit factors were reduced by 10% "across the board." HECM loans with case numbers already assigned as of September 30, 2009 may be processed as usual. For these latter type loans, the lender need not change any of the calculations of the principal limit or re-disclose to borrowers any changes in the HECM proceeds available to the borrower. HUD's reduction in the principal limit factors renders unnecessary the proposal for a "credit subsidy" as initially requested in the President's proposed FY 2010 budget.

Mortgagee Letter 2009-31

As part of the “Helping Families Save Their Homes Act of 2009” (the HFSH Act), enacted on May 20, 2009, Congress directed HUD to enhance the eligibility requirements for persons participating in FHA programs.

HUD issued Mortgage Letter 2009-31 (ML 09-31), Strengthening Counterparty Risk Management, on September 18, 2009. ML 09-31 implements Section 203 of the HFSH Act which contains provisions that place limitations on those eligible to participate in FHA programs, restricts the use of a mortgagee name in advertising and promotional materials, places additional requirements on FHA-approved mortgagees, and expands FHA’s authority to pursue civil money penalties for violations of program requirements.

The HFSH Act directs, and ML 09-31 provides, that a mortgagee shall not have any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the applicant mortgagee who is:

- (1) currently suspended, debarred, or under a limited denial of participation,
- (2) under indictment for, or has been convicted of, an offense that reflects adversely upon the applicant’s integrity, competence or fitness to meet the responsibilities of an approved mortgagee;
- (3) subject to unresolved findings contained in a HUD or other governmental audit, investigation, or review;
- (4) engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility;
- (5) convicted of, or who has pled guilty or *nolo contendere* to, a felony related to participation in the real estate or mortgage loan industry:
 - (i) during the 7-year period preceding the date of the application for licensing and registration; or
 - (ii) 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;
- (6) in violation of provisions of the S.A.F.E. Mortgage Licensing Act of 2008 or any applicable provision of State law; or
- (7) in violation of any other requirement as established by the Secretary.

These ineligibility criteria were effective upon enactment of the HFSH Act, May 20, 2009..

While the above provisions are taken directly from Section 203 of the HFSH Act, several unanswered questions remain, including:

(i) which offenses reflect adversely on an applicant's integrity, competence or fitness to meet the responsibilities of an approved mortgagee,

(ii) does mere indictment of such an alleged offense provide a valid determinant of such competence or fitness,

(iii) must a mortgage immediately terminate an employee that has been indicted or convicted of and "offense that reflect adversely on an applicant's integrity, competence or fitness to meet the responsibilities" of participation in an FHA program,

(iv) what are the nature, type and extent of unresolved findings contained in a HUD or other governmental audit, investigation, or review (does this include an examination report, or a pending examination report to which the regulated entity has responded and is contesting, but which report or exam has not yet been finalized or closed),

(v) must violations of state law that occurred prior to the enactment date of the HFSH Act (i.e., May 20, 2009) be reported now, and

(vi) which business practices do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility?

HUD will update its handbooks pertaining to these new requirements within 120 days from the issuance of ML 09-31, and HUD will issue conforming regulations as necessary. Hopefully, those regulations will address some or all of the above questions.

Expiration of FHA Approval

Entities already approved by FHA will not be permitted to renew their status at the next annual recertification date if they are not in compliance with the above-listed eligibility criteria.

Further, applications for approval submitted prior to the issuance of ML 09-31, but not yet approved, will be returned to the applicant, along with the application fee, for reapplication in accordance with the new criteria listed above. FHA approval for mortgagees that are not approved under the new criteria will expire thirty days after the recertification date.

Not Very Appealing

While ML 09-31 does not alter the current procedures in place in the regulations and handbooks applicable to the appeal of adverse determinations, such appeal rights will be of little solace or consolation to persons who apparently must be terminated prior to filing such an appeal.

Reporting Requirements

Lenders now are required to notify FHA if there is a revocation of a State-issued mortgage loan originator license issued pursuant to the S.A.F.E. Act. Additionally, FHA-approved lenders must notify FHA of the following business changes:

(1) the debarment, suspension or a Limited Denial of Participation (LDP), or application of other sanctions, other exclusions, fines, or penalties applied to the lender or to any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the lender pursuant to applicable provisions of State or Federal law; and

(2) the revocation of a State-issued mortgage loan originator license issued pursuant to the S.A.F.E. Mortgage Licensing Act of 2008 or any other similar declaration of ineligibility pursuant to State law.

FHA-approved lenders must report these changes immediately in writing to the Director, Lender Approval and Recertification Division on company letterhead and signed by a senior officer.

Civil Money Penalties

The HFSH Act expands FHA's ability to seek civil money penalties against any owners, officers, or directors, of an FHA-approved mortgagee for violations of program requirements.

FHA is also authorized to pursue civil money penalties against:

(1) any non-FHA approved or unauthorized individual or entity that originates an FHA-insured mortgage;

(2) any participant in FHA programs that causes or participates in any violation regarding transfer of FHA loans to non-FHA approved entities, or a failure to properly handle certain escrow funds,

(3) any person, party, company, firm, partnership, or business, including sellers of real estate, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, for any use of FHA, HUD, Ginnie Mae, the acronyms HUD, FHA, or GNMA, or any official seal or logo of the HUD, except as authorized by HUD.

Additionally, the HFSH Act amended the definition of "knowingly" such that a person acts knowingly when he or she has actual knowledge of acts or should have known of the acts.

[For further details and changes regarding FHA approval and eligibility requirements, see also, below, on page 11 herein, HUD's announced policy changes on potential proposed rule-making to be issued soon on removing the approval process for FHA-approved Loan Correspondents.]

Mortgage Letter 2009-21

On June 30, 2009, the Federal Housing Administration (FHA) issued Mortgage Letter 2009-21 (ML 09-21) correcting and clarifying that certain FHA-insured home equity conversion mortgage loans (or HECMs) that have been assigned to HUD are eligible for refinance in a so-called "HECM-to-HECM" refinance transaction.

Unlike the typical assignment to HUD of a "forward" FHA-insured single family loan (or a deed to the real property securing the loan and arising from a foreclosure of the loan), with a HECM reverse mortgage

loan, the loan can be assigned to HUD without there being a “default” by the borrower. This occurs, for instance, when the outstanding loan balance reaches 98% of the maximum claim amount.

Prior HUD guidance did not take into full account the possibility that borrower’s with HECM loans that had been assigned to HUD may not be in default, and thus, if interested, should continue to qualify for a so-called “HECM-to-HECM” refinance transaction. Thus, the need for the clarification contained within ML 09-21. ML 09-21 corrects the issue with respect to refinancing HECMs that have been assigned to HUD, and provides further guidance with respect to all HECM-to-HECM refinance transactions.

The statutory genesis of “stream-lined” HECM-to-HECM refinance transactions has its origins in the American Homeownership and Economic Opportunity Act of 2000 (enacted on December 27, 2000, the “AHEOA”), reportedly the last piece of federal legislation signed by then President Bill Clinton. Section 201 of the AHEOA authorized the FHA to insure a HECM loan that refinances an existing FHA-insured HECM loans (i.e., a HECM-to-HECM” refinance) if certain conditions are met. Those conditions include a requirement for lender-mortgagees to provide prospective senior-mortgagors with an anti-churning disclosure which informs the senior of the total cost of the refinancing transaction and the new principal limit. The new law also allows for a lower up-front mortgage insurance premium (MIP) in “HECM-to-HECM” refinances transaction, and provides the conditions under which FHA will waive the HECM counseling requirement.

Section 201 of the AHEOA directed HUD to issue implementing regulations within 180 days of its enactment. HUD published those proposed regulations in 2001, and on March 25, 2004, HUD published an interim rule implementing its refinance insurance authority and mandating an “anti-churning disclosure” requirement as a consumer protection measure. The wording in this rule (promulgating 24 CFR § 206.53) limited FHA’s refinance authority to “presently insured HECMs”, arguably excluding certain HECM loans already assigned to HUD from being eligible for HECM-to-HECM refinancing.

Thus, on September 4, 2008, HUD issued regulations making a technical correction to the HECM regulations, extending FHA’s HECM refinance insurance authority and the benefit of a reduced initial mortgage insurance premium (MIP) to HECM loans that have been assigned to HUD due to the loan balance having reached 98% of the maximum claim amount (or in one other instance involving an assignment of HECM loan with late payments). [HUD also previously issued HECM to HECM refinance guidelines in Mortgagee Letter 2004-18.] With ML 09-21, FHA announced it would insure all loans that were originated for the purpose of refinancing with a new HECM an assigned HECM loan that is not in a due and payable status for reasons that cannot be corrected, such as death of the last mortgagor or conveyance of title by all mortgagors, but closed on or after October 6, 2008, the effective of the rule issued on September 4, 2008. Mortgage Letter 2009-21 corrects, clarifies and replaces ML 04-18 and was effective upon its publication (June 30, 2009).

Reduced Mortgage Insurance Premium

As with other HECM-to-HECM refinance transactions, FHA will collect a reduced up-front MIP of two (2%) percent of the increase in the maximum claim amount (i.e., the difference between the maximum claim amount for the HECM-to-HECM refinance and the maximum claim amount for the existing HECM being refinanced).

A senior borrower may obtain a reduced up front MIP in a HECM-to-HECM refinancing secured by the same home that serves as collateral for HECM loan being refinanced. Thus, for instance, seniors that currently have a HECM loan cannot obtain a reduced upfront MIP by replacing their current HECM (and home) with a new HECM for Purchase that finances a new home.

Anti-Churning Disclosure Requirements (Timing of Delivery Depends upon TILA Classification of Loans as Open or Closed End Credit)

With ML 09-21, HUD revised and published a new form HUD-92901 "Home Equity Conversion Mortgage (HECM) Anti-Churning Disclosure." The prospective senior borrower must sign the Anti-Churning Disclosure and the lender-mortgagee must include the Disclosure in the FHA case binder.

The Anti-Churning Disclosure is designed to ensure that the HECM refinance will benefit the mortgagor. In the Anti-Churning Disclosure, the lender-mortgagee must provide the mortgagor its best estimate of: (i) the total cost of the refinancing to the mortgagor; and (ii) the increase in the mortgagor's principal limit as measured by the estimated initial principal limit on the HECM refinance less the current principal limit on the existing HECM. The "current principal limit" is the remaining loan amount the mortgagor could withdraw from the existing HECM.

As part of a HECM-to-HECM refinance transaction, the lending-mortgagee must provide a best estimate of funds available to the mortgagor minus any closing costs and other fees. For HECM-to-HECM refinance transactions that constitute closed end credit, as defined under the federal Truth-in-Lending Act (TILA), the lending-mortgagee must provide the prospective senior borrower with the Anti-Churning Disclosure form concurrently with the RESPA-required Good Faith Estimate (GFE), as specified under RESPA's Regulation X, 24 C.F.R. 3500.7.

For HECM-to-HECM refinance transactions that constitute open end credit, as defined under the federal Truth-in-Lending Act (TILA), lending-mortgagees must provide the prospective senior borrower with the Anti-Churning Disclosure concurrently with such other disclosure forms that can be provided in lieu of the GFE under HUD's RESPA regulations at 24 C.F.R. 3500.7(h), i.e., the Important Terms disclosures required under TILA and Regulation Z, section 226.5b, in connection with open end credit secured by a consumer's dwelling.

Housing Counseling Requirements

The HECM Program requires all HECM mortgagors to receive counseling from an independent third party entity. For HECM refinance transactions, mortgagors can waive and opt out of the HECM counseling requirement only if all three of the following conditions are met: (i) the mortgagor has received the required HECM Anti-Churning Disclosure form; (ii) the increase in the mortgagor's principal limit exceeds the total cost of the HECM refinance by an amount equal to five (5) times the cost of the transaction; and (iii) the time between the closing on the existing HECM and the application for refinancing is within the past five years. The Anti-Churning Disclosure attached as an exhibit to ML 09-21 has spaces that must be completed in order to document the so-called "five (5) times" test.

If a prospective senior HECM borrower opts out of HECM counseling, the lender-mortgagee must estimate the increase in the mortgagor's principal limit and include that estimate in the FHA case binder in

order to document that the senior meets the condition for waiver of counseling. An exhibit attached to ML 09-21 illustrates how to calculate the total cost of HECM refinance. The exhibit also illustrates how to determine whether the counseling may be waived.

Information Provided to Mortgagees Originating HECM– to–HECM Refinance Loans

The originating mortgagee of a HECM-to-HECM refinance must contact the current HECM Servicer and obtain the following information: (i) the maximum claim amount for the existing HECM; (ii) the current principal limit of the existing HECM, and (iii) the payoff amount for the existing HECM.

For HECM that have not been assigned to HUD, FHA Connection will provide the originating mortgagee with the name of the servicing mortgagee at the Case Number Assignment screen. Additional contact information for servicing mortgagees is available in FHA Connection under the Approval List screen or at HUD's website <http://www.hud.gov/offices/hsg/sfh/hecm/hecmservlist.pdf>.

For HECMs that have been assigned to HUD, the name of HUD's contract servicer, C&L Service Corp./Morris-Griffin Corp.'s (CLS-MGC) is displayed at the case number assignment screen. The originating mortgagee must input this information into the Home Equity Conversion Mortgage Calculation Software and will use the information to complete the Anti-Churning Disclosure Form.

Payoff of Existing HECM Loan

Servicing mortgagees must terminate the existing HECM. Once the outstanding balance of the existing HECM is paid in full, the servicing mortgagee must ensure both the first and second HECM security instruments are released.

For non-assigned loans, the servicing mortgagee is responsible for: (i) ensuring all outstanding advances are properly recorded prior to paying off the existing HECM; (ii) terminating the existing HECM from the Insurance Accounting Collection System (IACS); (iii) ensuring the first mortgage is released; and (iv) notifying CLS-MGC so that the second mortgage is released from record. This is only possible by providing documentation that the first mortgage has been paid in full or a copy of the lien release that was sent for recording.

For assigned loans, CLS-MGC is responsible for: (i) ensuring all outstanding advances are properly recorded prior to paying off the existing HECM; (ii) terminating the existing HECM from the Single Family Mortgage Asset Recovery Technology (SMART) system; and (iii) ensuring both the first and second mortgages will be released within seven (7) business days after the receipt and processing of the full payoff amount for the loan.

FHA Connection will reject prior HECM case numbers if the loan status is "terminated" or "due and payable."

State Law Issues with HECM-to-HECM Refinances

In addition to FHA requirements for HECM-to-HECM refinance transactions, lenders and other mortgage originators should be aware of state residential mortgage loan rules. Among other things, the

mortgage lending laws of several states require a lender to demonstrate a “net tangible benefit” to the borrower in a mortgage loan transaction. Many states’ net tangible benefit laws apply only to so-called “high cost” or “covered” loans (such as when the APR and/or points and fees in connection with the loan exceed certain thresholds). However, reverse mortgages are exempt from most (but not all) such state “high cost” home loan laws.

In any event, approximately one dozen states’ net tangible benefit requirements apply more broadly beyond the “high cost” context, and also can apply to reverse mortgage transactions. When a reverse mortgage is used to refinance and pay off a “forward” mortgage, thus eliminating the requirement that the senior continue to carry a monthly mortgage payment obligation of loan principal and interest, more often than not, a “net tangible benefit” to the borrower will be more easily established. However, in a HECM-to-HECM refinance transaction, additional criteria (besides eliminating such a monthly mortgage payment) may be required to establish a “net tangible benefit” to the borrower in such HECM-to-HECM refinance transactions. Many such states’ laws have a factor analysis, or a “totality of the circumstances” test, in order to show a “net tangible benefit” to the borrower. In a HECM-to-HECM refinance transaction, on such factor may be the FHA regulations’ the so-called “five (5) times” test.

Mortgagee Letter 2009-16

This Mortgagee Letter, issued on May 21, 2009, provides guidance on manufactured housing eligibility requirements for Federal Housing Administration (FHA) mortgage insurance under Title II of the National Housing Act. 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 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, a lender is required to file a request or application to purge the manufactured home title with the appropriate state or local authority (i.e., Department of Motor Vehicle). Mortgagees must comply with all state or local requirements for proper purging of the title [chattel or other equivalent debt instrument] and the property must be classified or taxed as real 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 applicable Homeownership Center for the region in which the property is located.

Mortgagee Letter 2009-11

This Mortgagee Letter, issued on March 27, 2009, clarified guidance on the 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

Mortgagee Letter 2009-10, also issued March 27, 2009, clarified several issues regarding HECM counseling requirements for prospective HECM borrowers. Specifically, ML 09-10 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.

HUD Announcement of Possible Ground-breaking Rule-Making on Removal of FHA Approval Process for Loan Correspondents

On September 18, 2009, FHA Commissioner David Stevens announced a series of policy changes and proposed policy changes to improve FHA lending programs and the FHA approval process. As part of those proposals, the Commissioner indicated that lenders seeking approval to originate, underwrite, or service an

FHA loan must meet the eligibility criteria for a supervised or non-supervised mortgagee. Mortgagees with this approval status must assume liability for all the loans they originate and/or underwrite.

Loan Correspondents (mortgage brokers) will continue to be able to originate FHA-insured loans through their relationships with approved mortgagees; however, under a proposal to be implemented by rule-making, Loan Correspondents will no longer receive independent FHA approval for origination eligibility. These policy changes will require the FHA approved mortgagee to assume responsibility and liability for the FHA insured loan underwritten and closed by the approved mortgagee. These changes align FHA with the GSEs and will potentially increase the number of loan correspondents (mortgage brokers) who are eligible to originate FHA-insured loans while providing for more effective oversight of loan correspondents through the FHA approved mortgagees.

Federal Legislation

As part of the "Helping Families Save Their Homes Act of 2009" (the HFSH Act), enacted on May 20, 2009, Congress directed HUD to enhance the eligibility requirements for persons participating in FHA

programs. These provisions are contained in section 203 of the HFSH Act and are outlined above in the overview on Mortgagee Letter 2009-31.

Section 404 of the HFSH Act amends the federal Truth-in-Lending Act to require that "creditors" give notice to borrowers within 30 days after their loan is sold or transferred.

The HFSH Act also potentially shortens the lease term for leased collateral used to secure a HECM loan. A HECM loan now may be secured by property under a lease that has a term that ends no earlier than the minimum number of years, as specified by HUD, beyond the actuarial life expectancy of the mortgagor or co-mortgagor, whichever is the later date.

TILA

Legislation and Regulation

In July 2008, the Federal Reserve Board published a final rule imposing a number of restrictions on mortgage loans that were not previously 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 became effective on October 1, 2009, except that the federal housing legislation, enacted at the same time the new rules were issued, instructed that the Board to 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 excluded from 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, most provisions of which became effective on October 1, 2009.

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 TIL Closed End Non-Purchase Money Loan Disclosures

The initial disclosures that must be provided within three business days of application will apply to any closed end mortgage transaction secured by a consumer's dwelling and subject to RESPA. Previously, this 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 also are current separate early TILA disclosures required under Regulation Z for open-end credit secured by the consumer's primary dwelling, and these open early disclosure rules continue to apply.] In transactions subject to the new closed end initial 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 law further revised requirements already contained in the rules and required that the effective date be moved up from October 1, 2009, and thus the new rules became effective July 30, 2009.

Under the new rules, a creditor must provide an early closed end TIL disclosure in connection with a closed end non-purchase money mortgage loan transaction 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.

The Fed Proposes Even More, Very Substantial Changes to Regulation Z

On August 26, 2009, the Federal Reserve Board proposed substantial amendments to both the open end and closed end credit rules under Regulation Z. If adopted, not only will the proposed rules substantially change the open end and closed credit disclosure rules under Regulation Z, but the rules as revised also would include all closing costs in the cost of credit for closed end TIL disclosures (similar to the TALC calculations for reverse mortgages), substantially revise the timing and content of open end disclosures, and place limits on mortgage broker and loan officer compensation on all consumer mortgage loans. In this and other regards, the proposed changes would impact reverse mortgages. Comments are due December 24, 2009.

Further, reportedly, in 2010, staff at the Federal Reserve will be further reviewing and perhaps revising the reverse mortgages rules under Regulation Z.

RESPA Reform

On November 17, 2008 the Department of Housing and Urban Development (“HUD”) finalized substantial revisions and 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:

- Revising substantially the Good Faith Estimate (“GFE”).
- A GFE must be issued when the following information is obtained by a loan originator: applicant’s name, Social Security Number, property address, monthly income, applicant’s best estimate of the property value and loan amount sought, and any other information required by a loan originator.
- 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 providing 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 (and the HUD RESPA FAQ’s confirm) 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.
- 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 by rule making, however, the remainder of the rule is slated to become effective January 1, 2010.

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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.

Reverse Mortgage RESPA FAQ’s

Since issuing the final rule, in the summer of 2009, HUD began issuing "FAQ's" responding to industry and interested party questions regarding the new RESPA rule. On October 22, 2009, HUD the sixth version of its RESPA FAQ’s and this set of FAQ’s contained answers to reverse mortgage specific questions, particularly questions surrounding how to complete the “Summary of Your Loan Terms” section on page 1 of the new GFE.

Some of the responses indicate that:

- The initial loan amount for purposes of the GFE and HUD-1 is the initial principal limit (with instructions that, in completing line 202 of the HUD-1 Settlement Statement, any initial draw can be shown in lines 204 thru 209 in the borrower’s column);

- The loan term for a reverse mortgage generally should be listed as “N/A”;
- The amount for payment of principal, interest or mortgage insurance for a reverse mortgage may be entered either “Not Applicable” or “N/A”;
- The box entitled “Even if you make payments on time, can your loan balance rise?”, should be checked “Yes”, however, the maximum to which the loan balance can rise may be reported as “Unknown”.
- Originators may check the “No” box in response to the question on the GFE “Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?”
- The repayment of a reverse mortgage is not considered a balloon payment;
- Regarding the statement on page 3 of the HUD-1 in the “Loan terms” section, the statement, “Your initial monthly amount owed for principal, interest and any mortgage insurance is,” an entry indicating “Not Applicable” or “N/A” should be utilized, and the boxes for principal, interest and mortgage insurance should not be checked; and
- The counseling fee should be disclosed in Block 6 on page 2 of the new GFE form.

The new GFE form and HUD-1 must be used for loans closed on or after January 1, 2010.

Regrettably, however, in the most recent HUD RESPA FAQ's (10/22/09) HUD answered a question and stated that if the lender will establish an arrangement whereby the lender/servicer will pay items such as property taxes or homeowner's insurance from a portion of the principal limit on a reverse mortgage, the loan originator should check “Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.” in the escrow account information section on page 1 of the GFE.

With the FHA-insured home equity conversion (or HECM) program, technically, the lender cannot require an "escrow account" for payment of property taxes or homeowner's insurance. With a reverse mortgage, there are no monthly "payments" made by the borrower, therefore, there will be no funds with which to establish an escrow account. However, the FHA HECM rules allow the borrower to require the lender to establish a "Property Charge Set Aside" account under which HECM loan proceeds that would otherwise be available for disbursement to the borrower for the seniors' general use, or instead set aside to pay for future recurring "property charges" (i.e., property taxes or homeowner's insurance).

In any event, importantly, NRMLA has confirmed with FHA personnel that the disclosure of the “RESPA Origination Charge” on the new GFE will not inadvertently or expressly act as a limit on the HECM Origination Fee, which HECM Origination Fee already is limited by section 255 of the National Housing Act. The FHA probably will issue a Mortgagee Letter soon to reiterate this guidance more formally.

State Law Updates

State Mortgage Licensing Updates

The S.A.F.E. Act

Prior to the enactment of the state SAFE Act laws, over 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 "Mortgage 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. [residential mortgage loan is defined such that it generally includes reverse mortgages.] The model SAFE Act legislation, that the CSBS and ARRM 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.

However, the President signed into law on July 30, 2008 the HERA. 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 of a loan originator.

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.

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. All states, except Minnesota, enacted S.A.F.E. Act related legislation in 2009. Some of those laws were effective in 2009, especially in those states that already had loan officer licensing requirements. In other states, the new S.A.F.E Act related requirements do not become effective until later, and in some states, entities and loan originators are given until 2010 to comply with the new S.A.F.E Act related requirements.

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. The Federal banking agencies proposed such rules and comments were due in July 2009.

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 published a model state law for the implementation of the S.A.F.E. Act.

NMLS

State mortgage regulators across the U.S. had 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. Currently, approximately thirty-one (31) states are utilizing the NMLS, and several more are coming on line by then end of 2009.

Reverse Mortgage Specific State Laws

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 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 such programs may 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 limitation on “other financial products” 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 entity level 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, general provisions of state “forward” mortgage-lending laws also apply to those entities or persons conducting reverse mortgage operations. Generally, state mortgage lending laws require: (i) licensing and regulatory approvals, (ii) loan disclosures, (iii) certain origination practices, including fee limitations, and (iv) protections with regard to so called “high cost home loans,” or predatory lending. Most states’ high cost home loan laws do not apply to reverse mortgages.

Illinois

However, there is no exemption for reverse mortgages from Illinois’ “anti-predatory lending law”, the Illinois High Risk Home Loan Act. While purchase money loans and open end credit are not covered by this law, the law has caused some consternation in the reverse mortgage industry, particularly in the area of the proper calculation of “points and fess” and the “total loan amount” in connection with fixed rate, closed end non-purchase money reverse mortgages. Legislation has been introduced in Illinois to exclude FHA mortgage insurance premiums from the points and fees test under the Illinois High Risk Home Loan Act, perhaps making HECM fixed rate, closed end HECM lending less complicated. NRMLA is working with members and local legislators to foster this and perhaps other viable solutions.

Below are updates on a few states that have enacted reverse mortgage specific legislation over the past eighteen (18) months, in chronological (and not alphabetical order), more or less.

2008 State Reverse Mortgage Legislation

Delaware - Imposes Requirements in Connection with Counseling for Reverse Mortgages.

Delaware HB 475 (2008) 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 – Omnibus Reverse Mortgage Legislation

Rhode Island House Bill 7723 and Senate Bill 2598 substantially amend Rhode Island’s reverse mortgage statutes. The measure took effect January 1, 2009. 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 – Legislature Passes Bill To “Close Loophole” in Regulation of Mortgage Lenders, then Enacts Omnibus Reverse Mortgage Legislation

On March 19, 2008, Washington's Governor Christine Gregoire signed a bill into law that will alter the licensing scheme governing mortgage lenders in Washington by amending the Consumer Loan Act ("CLA") and the Mortgage Broker Practices Act ("MBPA"). The bill is 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 entities 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, in light of the desire for more clarity within the reverse mortgage industry, efforts were undertaken, with NRMLA, and interested industry parties, and the state legislators and regulators, to craft legislation that will clarify the ability of CLA licensees to make reverse mortgages in the state of Washington.

As a result of these efforts, the Washington State Legislature enacted HB 1311, which creates the Washington State Reverse Mortgage Act. The Governor signed HB 1311, and the law became effective on July 26, 2009. The Act regulates reverse mortgage lending practices, establishes financial requirements for certain reverse mortgage lenders, and provides 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 enacted Vermont House Bill 222. The bill became law on July 1, 2009. The new law 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.

California – Revisions to California Civil Code Provisions on Reverse Mortgages (thru the Enactment of the Reverse Mortgage Elder Protection Act of 2009); and Revisions to Foreign Language Translation Requirements

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 were

removed and the bills substantially revised; and the express civil liability provisions also were removed. A rescission period contained in AB 329, as introduced, also was also removed.

A checklist requirement was added to both bills. The contents of the checklist advise seniors: (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 non-borrowing 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; (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; (vii) the ability of the borrower to finance alternative living accommodations, such as assisted living or long-term care nursing home registry, after the borrower's equity is depleted.

The bills also amends 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.

AB 329 was enacted and signed by the Governor, and will become effective January 1, 2010. SB 660 did not pass, but reportedly will be carried over to the 2010 California legislative session.

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) was enacted by the California legislature and signed into law by the Governor. A further detailed summary of AB 320 and AB 1160 are contained below.

Governor Schwarzenegger has signed into law AB 329, which amends provisions of the California Civil Code currently regulating reverse mortgages, to enact the Reverse Mortgage Elder Protection Act of 2009.

Reverse mortgage loans are currently regulated under existing California law. Among other things, existing law prohibits a lender from referring a borrower to anyone for the purchase of an annuity, requires a lender to refer a prospective borrower to a housing counseling agency for counseling, and requires a lender to provide an applicant with a reverse mortgage-specific disclosure notice. The Reverse Mortgage Elder Protection Act of 2009 creates additional consumer protections in connection with reverse mortgage loans.

Other Products: First, the Act adds a provision prohibiting a lender or any other person who participates in the origination of the mortgage from participating in, being associated with, or employing any party that participates in or is associated with any other financial or insurance activity, unless the lender maintains procedural safeguards designed to ensure that individuals participating in the origination of the mortgage shall have no involvement with, or incentive to provide the prospective borrower with any other financial or

insurance product. However, a lender may offer or refer borrowers for title insurance, hazard, flood, or other peril insurance, or other similar products that are customary and normal under a reverse mortgage loan. Additionally, a lender or any other person who complies with the FHA HECM cross-selling provisions shall be deemed to have complied with the cross-selling provisions of the Act.

Counseling: The Act requires a lender to provide the prospective borrower with a list of not fewer than ten (10) HUD-approved nonprofit counseling agencies in California. The counseling agency may not receive any compensation directly or indirectly from a lender or any other person or entity involved in originating or servicing the mortgage or the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product. However, the Act does not prohibit a counseling agency from receiving financial assistance that is unrelated to the offering or selling of a reverse mortgage loan, and that is provided by a lender as part of charitable or philanthropic activities.

Checklist: As detailed above in the discussion of the California reverse mortgage bills, additionally, the Act requires a lender to provide the borrower with a checklist specifying issues the borrower should discuss with a reverse mortgage counselor. For example, and among other things, the borrower must discuss how unexpected medical or other events that cause the borrower to move out of the home either permanently or for more than a year earlier than anticipated will impact the total annual loan cost of the mortgage. If the borrower seeks counseling prior to requesting a reverse mortgage loan application from a lender, the Act requires the mortgage counselor to provide the checklist. The checklist must be signed by the counselor (if the counseling is done in person) and the prospective borrower, with a copy provided to the borrower, and returned to the lender along with the counseling certification. The loan application will not be considered approved until the signed checklist is provided to the lender. Also, a copy of the checklist must be provided to the borrower.

Important Notice Reverse Mortgage Disclosure: Finally, the Act amends the notification language of the Important Notice disclosure, and further requires that the disclosure be provided to the borrower prior to receiving counseling.

AB 1160

Additionally, Governor Schwarzenegger has signed AB 1160 into law, which amends provisions on mortgage negotiations conducted in certain languages other than English, including reverse mortgages.

Existing California law requires a person in a trade or business who negotiates specified contracts or agreements primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean to deliver, except as otherwise specified, to the other party prior to execution of the contract or agreement, a translation of the contract or agreement in the applicable foreign language. Failure to comply with these provisions entitles the aggrieved party to rescind the contract or agreement. Moreover, these provisions apply to specified loans or extensions of credit subject to the Industrial Loan Law and the California Finance Lenders Law.

AB 1160 requires a “supervised financial organization” that negotiates primarily in one of the aforementioned languages in the course of entering into a contract or agreement for a loan or extension of credit secured by residential real property to deliver prior to the execution of the contract or agreement, and no later than three (3) business days after receiving the written application, a specified form in the applicable foreign language summarizing the terms of the contract or agreement. If any of the loan terms

summarized materially change after provision of the translated form but prior to consummation of the loan, the supervised financial organization must provide an updated version of the translated form prior to consummation of the loan.

A “supervised financial organization” is defined as a bank, savings association, credit union, or holding company, affiliate, or subsidiary thereof, and also includes entities licensed under the California Finance Lenders Law and California Residential Mortgage Lending Act. However, AB 1160 does not apply to federally chartered banks, credit unions, savings banks, or thrifts. Furthermore, the provisions of AB 1160 would not affect the obligations of a real estate broker.

Additionally, AB 1160 provides that a supervised financial organization that complies with these provisions would be deemed to be in compliance with the translation requirement in existing California law as previously described. Moreover, AB 1160 provides that a supervised financial organization that complies with the translation requirement in existing law would be in compliance with these provisions.

Note that the requirements under AB 1160 do not apply to a supervised financial organization that negotiates primarily in a language other than English if the party with whom the supervised financial organization is negotiating negotiates the terms of the contract through his or her own interpreter.

AB 1160 provides for administrative penalties against specified licensed persons for violations of these provisions, and authorizes an action against a supervised financial organization for a violation of these provisions to be brought only by a licensing agency or by the Attorney General. In addition, AB 1160 requires the Department of Corporations and the Department of Financial Institutions to create a new form for these purposes, and to make it available in each of the previously discussed languages. In creating the form, the Departments may use HUD’s Good Faith Estimate disclosure form as guidance.

AB 1160 would become operative beginning July 1, 2010, or 90 days after issuance of a form as provided, whichever occurs later.

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.

Other States Define Making HECM Advances as “Servicing”

In addition to Hawaii, several other states have laws or regulations, or recently have enacted what are otherwise “forward” mortgage laws or regulations, that further regulate and/or define making advances under a reverse mortgage or home equity conversion mortgage loan as regulated or licensable activity. Such states include Kentucky, Massachusetts, New York and North Carolina.

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.

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 suitability 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.

Reports are that similar reverse mortgage legislation will be introduced in the Minnesota legislature during the 2010 legislative session. NRMLA is working with members and local representatives in preparation for these efforts.

ⁱ 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.

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