

NRMLA EASTERN REGIONAL MEETING

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PLEASE TAKE NOTE: The enclosed materials are only an overview of some of the federal and state laws and regulations that may affect housing finance operations. The 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 may 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.

Federal Updates

Regulatory

Overview on HUD's Proposed Rule on Counseling

On January 9, 2007, HUD proposed a rule that would set eligibility requirements and standards for individuals providing counseling services to seniors interested in applying for a FHA-Insured Reverse Mortgage (HECM) loan. Below is an overview of the proposed rule. Comments were due on March 9, 2007. NRMLA submitted comments on the proposed rule, which can be downloaded from NRMLAOnline.org.

The purpose of the proposed rule is to enhance the quality of HECM counseling, further ensuring that seniors make informed decisions when considering whether to obtain a HECM loan. The proposed rule would amend HUD's HECM regulations to establish testing standards to qualify individuals as HECM counselors eligible to provide HECM counseling to prospective HECM borrowers. The proposed rule also would establish a roster of eligible HECM counselors and provide for their removal from the roster for cause.

HECM Counselor Roster

The rule would provide for the establishment of the HECM counselor roster. HUD will maintain the roster and require an applicant for a HECM loan to use a counselor registered on the roster. However, the inclusion of a counselor on the HECM counselor roster only means that the listed counselor has met the qualifications and conditions prescribed by HUD for inclusion on the roster.

Testing and Qualification Standards

A HECM counselor must apply to HUD to be considered for placement on the HECM roster. One requirement for registration is that a counselor must be employed by a HUD-approved housing counseling agency. Additionally, a counselor must pass a standardized HECM test that assesses minimum competencies. To remain eligible to counsel applicants seeking a HECM loan, approved HECM counselors must continue to receive training and education.

Removal from the Roster

The causes for the removal of a HECM counselor from the HECM counselor roster include, among others, failure to comply with the eligibility requirements, civil rights requirements, applicable statutes, regulations, or other written instructions or standards issued by HUD, and failure to maintain any state or local registration or certification requirements. A counselor may also be removed from the roster for steering clients to a particular lender. The proposed rule sets forth the procedure for removal of a HECM counselor from the HECM roster, including the detailed notice requirements that HUD must follow.

A HECM counselor who has been removed from the HECM counselor roster may be restored to the roster. Also, at any time, a HECM counselor may make a request to HUD, in writing, that he or she be removed from the roster. Nothing in the rule as proposed would prohibit HUD from seeking other remedies beyond those in the rule against an errant HECM counselor.

Administrative

Overview - Selected Portions of Mortgagee Approval Handbook 4060.1 REV-2

On August 14, 2006, HUD published a revised Mortgage Approval Handbook, Handbook 4060.1 REV-2 (sometimes hereinafter referred to as “the “Handbook”). The Handbook was effective upon publication. Below is an overview of selected and limited excerpts from the Handbook that are of particular interest to reverse mortgage originators.

Types of Mortgagees

The Handbook reiterates and provides an overview regarding the types of mortgagees that may participate in FHA-insured loan programs, such as the HECM loan program. Such mortgagees include non-supervised mortgagees, supervised mortgagees (such as depository institutions), loan correspondents and investors.

Supervised mortgagees are financial institutions that are members of the Federal Reserve System, and financial institutions whose accounts are insured by the Federal Deposit Insurance Corporation (FDIC), or the National Credit Union Administration (NCUA), such as banks, savings associations, and credit unions. Supervised institutions may also apply to be supervised loan correspondents or investing mortgagees. FHA approval only applies to the legal entity that is the actual applicant and does not cover any of its subsidiaries or affiliates. A subsidiary or an affiliate of a supervised mortgagee must apply separately for FHA approval as either a non-supervised mortgagee or non-supervised loan correspondent.

Non-supervised Mortgagees (i.e., mortgage lenders) are non-depository financial entities that have as their principal activity the lending or investment of funds in real estate mortgages. A non-supervised mortgagee may originate, underwrite, purchase, hold, service, and sell FHA insured mortgages and submit applications for mortgage insurance. A non-supervised mortgagee must maintain a warehouse line of credit or other mortgage-funding program acceptable to HUD. Acceptable programs include table funding and concurrent funding arrangements. The program must be adequate to fund the mortgagee's average 60-day origination production pipeline, but not less than a \$1 million warehouse line of credit or funding program. The line of credit must be issued directly to the mortgagee. In lieu of a warehouse line of credit, a mortgagee may have a letter from a financial institution stating that it will fund all mortgages originated by the mortgagee. A non-supervised mortgagee must spend a majority of its time and assets in the production of real estate mortgages and in the lending or investment of funds in real estate mortgages, or a directly related field. For FHA purposes, the principal activity of a non-supervised mortgagee, other than one organized as a not-for-profit entity, must contribute at least one-half of the entity's gross revenues, unless otherwise approved by FHA.

Non-supervised Loan Correspondents (i.e., mortgage brokers) are non-depository financial entities that have as their principal activity the origination of FHA-insured mortgages for sale or transfer to one or more Sponsors who underwrite the mortgages. Sponsors must have Direct Endorsement (DE) authority, (i.e., a DE mortgagee).

With single-family mortgage insurance programs, processing and underwriting must be performed by approved lenders under the Direct Endorsement (DE) program. Under the DE program, approved lenders underwrite and close mortgage loans without prior FHA review or approval. This includes all aspects of the mortgage loan application, the property analysis, and borrower underwriting. HECM mortgage insurance programs are eligible for DE processing. Mortgagee Letter 95-54 provides that mortgages, with or without regular DE approval, who have not closed at least 50 insured HECMs must

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submit five (5) HECM test cases to the local HUD office for pre-closing review prior to endorsement for insurance. If the underwriting processing of these 5 HECMs is satisfactory, the mortgagee is given unconditional authority by HUD to participate in the DE program for HECMs. After a mortgagee has completed the required test cases and received unconditional HECM DE approval from one local HUD office, unconditional DE approval will be granted for all HUD-approved mortgagee branch offices.

With few exceptions, a mortgagee must originate, close, fund, and submit mortgages for FHA insurance endorsement in its own name. A mortgagee may not perform only a portion of the loan origination process, such as taking the loan application, and routinely transfer the underwriting package (appraisal report and/or mortgage credit package) to another mortgagee, except between a loan correspondent and its sponsor, and a principal and its authorized agent. A loan correspondent may process an application and submit it to one of its sponsors for underwriting. The loan correspondent must close the loan in its own name, or in the name of the sponsor that underwrites the loan. Sponsors must be DE mortgagees.

In the Principal-Agent relationship, an authorized agent may perform any part of the loan origination process, including underwriting, on behalf of its principal; however, the loan must be closed in the name of the principal. The principal in the relationship can only be an FHA-approved non-supervised mortgagee, supervised mortgagee or government mortgagee; the authorized agent can only be an FHA-approved non-supervised mortgagee or supervised mortgagee. FHA-approved loan correspondents cannot serve as principals or authorized agents. Either party can originate or underwrite the loan as long as they have the appropriate approval. However, since the authorized agent typically underwrites the loan, its FHA lender ID number is shown in the sponsor field of an FHA case file. Also, since the principal typically takes the application, its ID number is placed in the originator field of the case file. Both mortgagees are responsible for the part of the origination and underwriting processing they perform. The loan must close in the name of the principal. Either party can submit the closed loan for insurance for the benefit of the principal. The relationship must be set up by the authorized agent on the FHA Connection. The amount of the origination fee each lender receives is a contractual matter to be determined by the principal and authorized agent. The total fees charged to a mortgagor may not exceed the amount allowed for the type of FHA single-family loan as provided for by the appropriate handbooks and mortgagee letters.

Each mortgagee that services or sub-services FHA-insured single-family mortgages must be an approved mortgagee and must follow the requirements of HUD Handbook 4330.1.

HECM Advisor Program

Handbook 4060.1 REV-2 provides that non-FHA-approved mortgage brokers meeting the requirements in Mortgagee Letter 00-10 may participate in connection with HECMs. Thus, in addition to the provisions in the HUD HECM regulations and ML 00-10, the Handbook provides further evidence of regulatory support of the HECM advisor program.

ML 00-10 provides that a HECM lender may charge a loan origination fee agreed upon by the borrower and lender. ML 00-10 capped the origination fee to the greater of \$2000 or two (2%) percent of the maximum claim amount. The borrower may finance the entire amount of the fee. As also provided in the HECM regulations, ML 00-10 reiterated that the financed origination fee is the full amount that the borrower can pay for the origination and underwriting of the mortgage and must also include the full amount of any mortgage broker fee or loan correspondent fee. The borrower is not permitted to pay any additional origination fees of any kind to a mortgage broker or loan correspondent. A mortgage broker fee can be included as part of the origination fee only if the mortgage broker is engaged independently by the homeowner. Additionally, the HECM regulations and ML 00-10 also provide that a mortgage broker's fee is not allowed if there is any financial interest between the mortgage broker and lender. A copy of the

agreement between the borrower and the mortgage broker to pay the broker fee must be submitted along with the loan application and other documents in the binder submitted to FHA.

Employees

Handbook 4060.1 REV-2 also provides that employees are those individuals who are under the direct supervision and control of an FHA-approved mortgagee, where the individuals are exclusively employed by the FHA-approved mortgagee in the mortgage lending and real estate fields. The mortgagee must demonstrate the essential characteristics of the employer-employee relationship upon inquiry by HUD.

A mortgagee may employ staff full time or part-time (less than the normal 40 hour work week). An employee may have other employment including self-employment. However, such outside employment may not be in mortgage lending, real estate, or a related field. Direct endorsement underwriters are included in this provision. An underwriter may not work on a part-time basis for any other mortgagee, even underwriting conventional mortgage loans. An underwriter may not underwrite loans for a parent or subsidiary of the underwriter's approved employer. On October 5, 2006, however, the Atlanta Home Ownership Center (or HOC) issued an informal letter providing that an individual acting as an FHA loan originator employee cannot act as an active real estate broker and originate FHA-insured loans. Nonetheless, the informal letter goes on to point out that loan officers of a FHA-approved lender involved in other types of financing may concurrently originate loans and act as a real estate broker. [Notwithstanding this FHA interpretation of its rules, some states' laws prohibit or place limits on real estate brokers also acting as mortgage brokers in the same transaction.]

Compensation of employees may be on a salary, salary plus commission, or commission only basis and includes bonuses. All compensation must be reported on Form W-2. Employees who perform underwriting and loan servicing activities may not receive commissions. Mortgagee Letter 06-30, discussed below, provides temporary relief regarding certain of these provisions of the Handbook.

Overview of Recent FHA Mortgagee Letters

ML 2006-30 (12/18/06) – This Mortgage Letter provides additional guidance, and temporary relief, on certain provisions in the Handbook. Per ML 2006-30, the FHA deferred its monitoring of mortgagees' employment compensation arrangements until March 1, 2007. FHA's stated purpose in providing the deferral is to give mortgagees more time to make changes to adjust to the provisions of the Handbook explicitly requiring that mortgagees pay their employees on a W-2 basis. ML 2006-30 states that HUD's guidance has always been that FHA-approved lenders use employees rather than contract staff to perform critical loan functions. The Handbook provides specific guidance to mortgagees as to the type of documentation that will determine compliance with this requirement.

ML 2006-25 (09/28/06) - This Mortgage Letter clarifies the counseling requirements for prospective HECM borrowers, including who must receive HECM counseling, and what activities a HECM lender may perform prior to a prospective HECM borrower receiving HECM counseling. The Mortgage Letter addresses HECM issues in connection with: (i) counseling requirements for the non-borrower spouse, (ii) counseling requirements for persons with a reversionary or remainder interest, trustees and trust beneficiaries, and (iii) counseling requirements for a prospective HECM borrower's children.

This Mortgage Letter also permits lenders to use automated valuation models (AVMs) to perform a preliminary estimation of the value of the real estate that will serve as security for the HECM. The AVM, however, does not take the place of the FHA appraisal. If the prospective borrower obtains a HECM, then the cost of the AVM should be included in the origination fee. Additionally, a HECM lender may order a preliminary title search prior to the prospective HECM borrower receiving counseling. However, a prospective HECM borrower does not have to wait until the HECM lender orders and reviews the preliminary title search to receive counseling. The costs associated with the preliminary title search will

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be paid at closing. If a prospective HECM borrower does not proceed to closing on the HECM, the borrower may not be charged for this service.

In order to combat fraud, HUD advises HECM counselors to discuss the potential for mortgage fraud with their clients. Counselors must explain the standard ways in which HECM borrowers can access their loan proceeds. Counselors should warn clients against signing over their funds to loan officers or other parties involved in the mortgage transaction.

ML 2006-23 (09/27/06) - With this Mortgagee Letter, the FHA announced that it will no longer require submission of photo identification as part of the HECM loan file. Mortgagees no longer need to provide any form of photo identification evidence for HECM borrowers when submitting case binders for FHA endorsement. This Mortgagee Letter replaces current FHA guidance found in HECM Handbook 4235.1 REV-1, paragraph 4-7 and Mortgagee Letter 2004-39.

In April 2004, FHA modified the FHA Connection to perform social security number validation checks against the Social Security Administration's database to help reduce the occurrence of identity theft and fraud in FHA programs. This validation check eliminates the need for photo identification. Mortgagees must ensure that the borrower meets program eligibility requirements by verifying each borrower's age, social security number and identity, and may not solely rely on the validation check being performed by the FHA Connection. Counselors should inform prospective HECM borrowers that a lender may require documents to be notarized and that the notary may require photo identification; however, this is not an FHA requirement.

ML 2006-22 (08/31/06) – In this Mortgagee Letter, the FHA extended the expected interest rate "lock-in" provision for HECMs to 120 days (from 60 days). The expected interest rate is used to calculate the principal limit for HECMs. The expected interest rate and principal limit are locked when the mortgagee takes the initial application. However, the "lock-in" period for counting the 120 days starts on the day that the FHA case number is assigned. In addition, FHA continues to allow the "float down" option whereby the principal limit may be recalculated at closing if the expected interest rate has declined and is lower than at initial application. This Mortgagee Letter replaced Mortgagee Letter 2003-16, and also revised instructions found in section "Requirements for Closing" contained in Chapter 6 of HUD HECM Handbook 4235.1 REV-1.

ML 2006-20 (08/16/06) - This Mortgagee Letter clarifies and reiterates that under the HECM program the FHA permits existing liens to be subordinated to the first and second HECM liens. An existing lien of record against real property that serves as collateral for a HECM loan is permitted if the following two conditions are satisfied: (i) the subordinate lien does not intervene between the first and second HECM liens (it is the mortgagee's responsibility to ensure that the first and second mortgages are the first and second liens of record, and that other liens do not intervene between the first and second mortgage); and, (ii) a lien against a HECM borrower's property, which is subordinate to the FHA-insured HECM first and second liens, cannot arise or be connected with obtaining a HECM loan. HECM regulations provide that there may not be any outstanding or unpaid obligations incurred by the HECM borrower in connection with the HECM transaction. Once a HECM loan is endorsed, however, the HECM mortgagor is not restricted from seeking a home equity loan, or engaging in another type of real estate financing transaction which would require an additional lien to be subordinated to the HECM first and second liens. This Mortgagee Letter also provides FHA guidance on the processing of HECM loan applications when a prospective HECM borrower is a person against whom a state or local court-ordered money judgment has been entered and remains unpaid.

ML 2006-07 (03/27/06) – This Mortgagee Letter clarifies that the "de-regulation" of closing costs for other FHA-insured single-family loans does not apply to HECM loans. FHA permits a HECM lender to charge a loan origination fee agreed upon by the borrower and lender, as specified in MLs 2000-10 and 2004-18. The amount of the origination fee that can be charged to the HECM borrower and financed in

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the HECM loan is capped at the greater of \$2,000 or two (2%) percent of the maximum claim amount on the HECM. The financed origination fee can include the costs for underwriting, processing, and any mortgage broker or loan correspondent fees. The HECM lender is not permitted to charge a HECM borrower any fees in addition to the origination fee to pay a mortgage broker or loan correspondent fee.

ML 2006-06 (03/17/06) - On November 23, 2005, voters in Texas ratified an amendment to the Texas Constitution to authorize line of credit advances under reverse mortgages. This Mortgagee Letter permits borrowers in Texas to choose a line of credit payment option in connection with a HECM loan. Seniors in Texas were given the flexibility to select from five (5) HECM payment options, which are currently available to HECM borrowers in the rest of the country.

State Law Updates

Conference of State Bank Supervisors Announces Nationwide Licensing System

In 2006, the Conference of State Bank Supervisors (CSBS) announced that it had entered into an agreement with the National Association of Securities Dealers to develop a nationwide licensing system for state residential mortgage regulators. The new Internet-based system is expected to be available during January 2008. The proposed national licensing system and database will include uniform license applications for licensing of entities and individuals. In addition, licensees will be able to renew their licenses and registrations, as well as the licenses and registrations of their loan originators, using the national system and database.

The proposed database will maintain a central repository of information regarding licensing, publicly adjudicated enforcement actions, and background data for every licensed mortgage broker, mortgage lender, and loan originator. State mortgage regulatory agencies, licensees, and consumers each will have varying degrees of access to the database.

The CSBS and the American Association of Residential Mortgage Regulators (AARMR) expect that the national licensing system and database will streamline the licensing process in each of the participating states. At least 30 state regulatory agencies have indicated that they intend to participate in the system. It is expected that between ten and twelve states will implement the national licensing system during 2008, with the remainder implementing the system during 2009 and 2010.

Importantly, the efforts by the CSBS, AARMR and the state mortgage regulatory agencies regarding a national licensing system and database do not create a more general uniform mortgage origination licensing law or regulation. While such a uniform mortgage origination licensing law or regulation has been discussed, and a committee formed by CSBS and AARMR, efforts to move forward with such a uniform law are not yet fully under-way.

State Mortgage Licensing Updates

Florida

Effective October 1, 2006, Florida law was amended to change licensing requirements for mortgage broker, correspondent lender, and mortgage lender licensees. One element of the law changes requirements for the designated principal representative of Florida licensees. Designated principal representative applicants must now provide fingerprint cards to the Office of Financial Regulation. In addition, individuals who have continuously served as a designated principal representative for one year, and have not had a lapse in such capacity for more than two years prior to the filing of an application, are deemed to qualify as a designated principal representative.

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Georgia

On September 11, 2006, Georgia Department of Banking and Finance ("DBF") rule changes became effective. The DBF updated its advertising requirements to include electronic media advertisements. A licensee must now include the license name, license number, an office address and the words "Georgia Residential Mortgage Licensee" in any electronic advertisement or solicitation. The new rules also specify that loan files must have a copy of the order for an appraisal and final appraisal if the licensee ordered the appraisal. Additionally, the revised regulations contain an expanded definition of hiring a felon to cover retention of a felon, and require background checks to be filed within ten business days of the employee's hire date. Finally, the regulations now require licensed brokers that obtain their licenses between April 1 and December 31 to complete 12 hours of continuing education in order to qualify to renew their licenses for the next license renewal period.

On July 1, 2006, Georgia amended the Georgia Residential Mortgage Act to include an exemption for a natural person who is under an exclusive written independent contractor agreement with a subsidiary of a financial, bank, savings bank or thrift holding company, subject to an undertaking of accountability.

Illinois

On November 3, 2006, Governor Rod R. Blagojevich of Illinois announced the results of the Illinois Mortgage Fraud Task Force ("MFTF"), which conducted unannounced inspections of the premises of Illinois Residential Mortgage Licensees in order to determine whether such licensees utilized loan originators that were not properly licensed. Since the unannounced inspection process began in March 2006, over 45 companies and individuals have been subject to discipline by the Illinois Department of Financial and Professional Regulation. It is expected that the MFTF will continue to conduct unannounced inspections in order to evaluate compliance with the loan originator licensing requirements.

Indiana

Effective February 16, 2006, regulations issued by the Securities Division of the Indiana Secretary of State clarified Loan Originator education requirements for Loan Broker Licensees. The Securities Division requires that Loan Originators complete 24 hours of live academic instruction prior to registration as a Loan Originator. Accordingly, after March 1, 2006, on-line correspondence courses will no longer be accepted as evidence that an individual has met applicable pre-licensure education requirements. The regulations also clarify that Loan Originators may not be independent contractors, but the Securities Division has concluded that it is beyond its jurisdiction to determine whether Loan Originators may be compensated on a 1099 basis. Loan processors and those individuals that do not communicate loan terms or conditions with borrowers or prospective borrowers are not required to be licensed as Loan Originators.

Iowa

Effective July 1, 2006, loan officers must be licensed in order to conduct business for licensed Iowa Mortgage Bankers and Brokers. The Iowa Division of Banking posted the Loan Officer License Application on its website. Individuals who do not have direct contact with loan applicants, along with loan processors, are statutorily exempt from registering as loan officers.

Kentucky

Effective July 11, 2006, the exemption from licensure under the Mortgage Loan Company License and/or the Mortgage Loan Broker License for entities approved by HUD (provided that those entities registered with the Kentucky Office of Financial Institutions) was statutorily narrowed. Entities relying

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upon such exemption must annually fund or broker a minimum of twelve (12) FHA-insured loans on Kentucky properties in order to maintain the exemption. Entities that rely upon this exemption will be required to annually provide a list of funded or brokered FHA-insured loans to the Office of Financial Institutions on or before January 15. As was previously the case, branches of exempt entities that are approved by HUD also are exempt from licensing; however, those branches also must annually fund or broker a minimum of 12 FHA-insured loans on Kentucky properties in order to maintain such exemption.

The Kentucky Office of Financial Institutions issued guidance regarding its implementation of these recent statutory changes. Specifically, FHA-approved entities that are exempt from licensing, including lenders, brokers, and branches of such entities, were required to apply for licensure no later than February 15, 2007 if such entity did not fund or broker at least 12 FHA-insured residential mortgage loans secured by Kentucky real property during 2006.

Maine

Effective February 10, 2007, the Maine Office of Consumer Credit Regulation adopted continuing education requirements for loan officers of Supervised Lender Licensees and Loan Broker Licensees. On or before January 31, 2008, each individual registered as a Maine loan officer must complete no fewer than 12 hours of approved continuing education courses. Thereafter, such individuals will be required to complete 12 hours of approved continuing education courses annually. Individuals that are not licensed to conduct business as a Maine loan officer as of January 31, 2008 will be required to complete a minimum of 16 hours of approved continuing education courses immediately subsequent to qualification. Thereafter, such individuals will be required to complete 12 hours of approved continuing education courses annually. Also, note that all approved continuing education courses will include a proctored examination or another verifiable testing process to ensure that each individual has retained the material discussed in the continuing education courses.

Maryland

In 2006, the Maryland Commissioner of Financial Regulation issued regulations clarifying certain aspects of mortgage originator licensing. Specifically, in order to qualify for licensure, mortgage originator applicants must demonstrate that they either: (1) have three years of experience in the mortgage lending business and have completed applicable continuing education requirements; or (2) have completed 40 hours of approved continuing education and passed an examination within the previous 24 months.

Mississippi

Effective July 1, 2006, changes to Mississippi regulations require that Mortgage Company Licensees and Registrants comply with additional significant event reporting requirements. Among others, Mortgage Company Licensees and Registrants must provide written notice to the Department of Banking and Consumer Finance regarding a loan originator's termination of employment within 30 days of that date. In addition, Mortgage Company Licensees and Registrants are now required to maintain a log at their principal licensed location. That log must include: the name of the applicant and co-applicant, date of application, and the disposition of the loan application – including the date of loan funding, loan denial, withdrawal, and, if applicable, the name of the lender. The regulations also now provide that each licensed branch location must have at least one licensed loan originator working at that location. Finally, the regulations contain guidelines regarding license posting obligations for licensees, registrants, and loan originators.

New Hampshire

Effective August 18, 2006, New Hampshire law requires that each mortgage banker and each mortgage broker post a surety bond in the amount of \$20,000. Previously, licensed New Hampshire

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Mortgage Bankers are not required to file a surety bond with the New Hampshire Banking Department if they maintain a net worth equal to or in excess of \$100,000.

New Jersey

Effective July 1, 2006, the New Jersey Department of Banking and Insurance is moving to a new assessment program, which will allow the Department of Banking and Insurance to recoup its actual expenses from Licensed Lenders and other regulated institutions. Licensed Lenders will be billed annually on or about September 30 for expenses incurred during the previous fiscal year. In connection with the new assessment system, known as "Dedicated Funding," all regulated institutions now must file annual reports to the Department of Banking and Insurance.

New York

Effective January 1, 2008, New York law will require that loan officers of Mortgage Banker Licensees and Mortgage Broker Registrants obtain registrations from the New York State Banking Department prior to conducting loan origination activities. Each Loan Originator, in connection with registering with the New York State Banking Department, will be required to demonstrate that he or she has completed eighteen (18) hours of education courses within the five-year period prior to registration or, in the alternative, must complete such education within one year after registration. Furthermore, as a condition of renewing a registration, each loan officer will be required to complete at least 18 hours of continuing education every two years.

Importantly, loan officers that are employed by or affiliated with a Mortgage Banker Licensee or a Mortgage Broker Registrant prior to January 1, 2008 and who engage in mortgage loan origination activity on or after January 1, 2008 are not required to meet the registration requirements until January 1, 2010. In certain instances, such loan officers also are subject to lesser continuing education requirements.

Ohio

Effective September 1, 2006, the Ohio Division of Financial Institutions ("Division") replaced its prior regulations for the Ohio Mortgage Broker Act. The revised regulations significantly update and expand upon the previous regulations, including clarifying which activities constitute licensable activity and expanding existing advertising and record-keeping requirements. For example, the new regulations clarify that acting as a lead generator, by soliciting personal financial and mortgage information from buyers and providing that information to a mortgage broker for consideration, requires licensure.

Effective September 1, 2006, all Operations Managers of Mortgage Broker Licensees are required to hold an active Loan Officer License. Any Operations Manager approved as of September 1, 2006 was issued a Loan Officer License within sixty (60) days of September 1, 2006 at no cost to the Operations Manager. Those individuals are not be required to sit for the Loan Officer examination. The regulations also explain the categories in which the status of a license may fall, and clarify that loan officers may only originate mortgage loans for a Mortgage Broker Licensee if they: (1) hold an Active Loan Officer License; or (2) hold an Escrowed Loan Officer License (i.e., a license that has been placed on inactive status at the request of the loan officer or because the loan officer no longer is employed by a Mortgage Broker Licensee), have submitted a Transfer Application to the Division, and the Mortgage Broker Licensee to whom their employment is transferring has received written confirmation from the Superintendent of the Division. The regulations also require licensure for any location that maintains Ohio loan records that otherwise must be maintained by Mortgage Broker Licensees. In addition, the regulations expand advertising-related disclosure requirements for each advertisement distributed by a licensed Mortgage Broker.

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Effective January 1, 2007, certain provisions of the Ohio Mortgage Broker Act are amended to change licensing obligations for Mortgage Broker License Applicants. Mortgage Broker License Applicants that file their license application on or after January 1, 2007 will be required to provide evidence that their proposed Operations Manager has completed at least twenty-four (24) hours of live, classroom education. In addition, loan officer applicants who apply for licensure on or after January 1, 2007 must provide evidence that they have completed twenty-four (24) hours of live, classroom education.

Oklahoma

Effective November 1, 2006, individuals that are licensed as a mortgage loan originator under the Mortgage Broker Licensure Act must complete 16 hours of approved continuing education prior to license renewal.

Rhode Island

On January 25, 2007, the Rhode Island Division of Banking and Securities ("Division") issued a notice requiring entities licensed with the Division, including Lender Licensees and Loan Broker Licensees, to notify the Division regarding any significant modifications to the licensee's business plan or to the business that it conducts in Rhode Island. At least thirty (30) days prior to a modification of its business plan, a licensee shall: (1) advise the Division regarding the manner in which the licensee will modify its business plan or activities; (2) describe the potential impact on the Rhode Island market that will result from the change to its business plan; (3) provide a timeline regarding the modification to its business plan; and (4) advise the Division regarding its plan to process pending applications to ensure that customers that may be affected by the modification to the licensee's business plan will not be adversely impacted.

Other Selected State Mortgage Law Updates

California Senate Bill 1609

California Senate Bill 1609 revised California Civil Code Section 1632 and California Civil Code Sections 1923.2 and 1923.5. The bill made four changes to California law applicable to reverse mortgages, as follows: (i) adding a language translation requirement in certain circumstances, (ii) prohibits the "tying" of an annuity to a senior's obtaining a reverse mortgage, and prohibits solicitation of annuities to reverse mortgage borrowers for a specified period after closing, (iii) requires that counseling be provided by a HUD-approved counselor in connection with any reverse mortgage transaction, and (iv) changes a disclosure requirement for reverse mortgages. This law became effective January 1, 2007.

Section 1632 of the California Civil Code was amended several years ago to require any person engaged in a trade or business that negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean (hereinafter "Other Language") in the course of entering into specified contracts to deliver to the other party, prior to the execution of a contract or agreement, a translation of it in the language in which it was negotiated. As previously drafted, the translation requirement did not apply to contracts secured by real property unless a Real Estate (DRE) or California Financial Lender (CFL) Licensee undertook such transaction. Senate Bill 1609 amends Section 1632 of the California Civil Code to require reverse mortgage originators to comply with this translation requirement if certain conditions are met.

Thus, a loan originator or lender that, in the course of entering into a loan contract, negotiates orally or in writing primarily in the Other Language must deliver to the consumer, prior to the closing of the loan, a translation of the loan contract or agreement in the language in which the contract or agreement was negotiated, which includes a translation of every term and condition in the contract or agreement. This requirement applies to Real Estate and California Lender Licensees, as well as financial institutions

entering into reverse mortgage loan contracts. However, the term “contract” or “agreement” does not include any subsequent documents contemplated by the original document, such as periodic statements.

Even when the lender or originator negotiates the loan contract or agreement in the Other Language, the requirement to provide a translation of the loan contract or agreement does not apply if the consumer has his or her own interpreter. “His or her own interpreter” means a person, not a minor, able to speak fluently and read with full understanding both the English language and the Other Language in which the contract or agreement was negotiated, and who is not employed by, or whose service is made available through, the person engaged in the trade or business.

However, for loans made by DRE Licensees, if such an originator delivers a translation of the mortgage loan disclosure statement to the borrower (as required by Section 10240 of the Business and Professions Code) in the Other Language in which the loan contract or agreement was negotiated, then the DRE Licensees is deemed to have complied with the translation requirements of Section 1632.

If a supervised financial organization provides a translation of the disclosures required by Regulation Z, and, if applicable, Industrial Loan or California Finance Lender laws in the Other Language in which the contract or agreement is negotiated, prior to the execution of the contract or agreement, this shall also be deemed in compliance with the translation requirements of Section 1632. “Supervised financial organization” means a bank, savings association, credit union, or holding company, affiliate, or subsidiary thereof, or a DRE, Industrial Loan or California Finance Lender Licensee.

If negotiated in the Other Language, the lender or originator must provide the consumer with a notice at closing in the Other Language in which the loan was negotiated. The notice must be in the Other Language in which the loan contract or agreement was negotiated and must be conspicuously displayed to the effect that the lender or loan originator is required to provide a loan contract or agreement in Other Language in which the contract or agreement was negotiated, or a translation of the disclosures required by law in the Other Language in which the contract or agreement was negotiated, as the case may be. If a lender or originator does business at more than one location or branch, these notice requirements only apply with respect to the location or branch at which the contract was negotiated in the Other Language.

A translation may retain the following elements of the executed English-language contract or agreement without translation: names and titles of individuals and other persons, addresses, brand names, trade names, trademarks, registered service marks, full or abbreviated designations of the make and model of goods or services, alphanumeric codes, numerals, dollar amounts expressed in numerals, dates, and individual words or expressions having no generally accepted non-English translation. It is permissible, but not required, that this translation be signed.

The terms of the contract or agreement which is executed in the English language shall determine the rights and obligations of the parties. However, the translation of the contract or the disclosures in the Other Language in which the contract or agreement was negotiated shall be admissible in evidence only to show that no contract was entered into because of a substantial difference in the material terms and conditions of the contract and the translation. A lender must not make a reverse mortgage loan without first complying with, or in the case of brokered loans ensuring compliance with, these translation requirements, if applicable. Upon a failure to comply with these translation requirements, the person aggrieved may rescind the contract or agreement.

California Senate Bill 1609 also prohibits the “tying” of an annuity to a senior’s obtaining a reverse mortgage, and prohibits solicitation of annuities to reverse mortgage borrowers during the rescission period after closing. California Senate Bill 1609 requires that counseling be provided by a HUD-approved counselor in connection with any reverse mortgage transaction. California Senate Bill 1609 also revises a disclosure that lenders must provide to reverse mortgage applicants.

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California Senate Bill 1018

California Senate Bill 1018 enacts the California Financial Elder Abuse Reporting Act of 2005 and amends, repeals and adds Section 7480 of the California Government Code, amends, repeals and adds Sections 15634, 15640 and 15655.5, and adds and repeals 15630.1 of the California Welfare and Institutions Code relating to elder and dependent adult abuse. This law facilitates the reporting of elder financial abuse, as well as to include officers and employees of financial institutions in the class of individuals that are mandated to report such financial abuse. Financial abuse is defined as those instances in which a person or entity takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both. Assisting in any of these activities also constitutes financial abuse.

The Act requires mandated reporters, including officers and employees of financial institutions, who observe or know of elder abuse to immediately report the suspected abuse. The mandated reporter: (i) who had direct contact with the abused individual or (ii) who reviews or approves the individual's financial documents, records, or transactions (iii) in connection with providing financial services for the individual (iv) that observes an incident or reasonably suspects abuse on the information before him/her (v) must report the abuse by telephone and written report. Please note that an elder's allegation of abuse is insufficient to trigger the reporting requirement if the reporter does not have any corroborating or independent evidence of the abuse, or if the reporter reasonably believes that the abuse did not occur.

The Act defines a financial institution as a depository institution, as defined in 12 U.S.C. 1813(c): banks, savings associations, uninsured branches or agencies of foreign banks, and certain commercial lending companies owned or controlled by foreign banks. Thus, it would not appear that non-depository institutions, including trust companies and their subsidiaries, are subject to the reporting requirements under the law.

The civil penalty for failure to report the abuse is \$1,000, unless the failure is willful. The civil penalty for willfully failing to report the abuse may be up to \$5,000. The financial institution that employs the mandated reporter must pay the civil penalty to the party bringing the action. Before it was enacted, the Act was amended to address the financial industry's concerns that the law could give rise to costly litigation removing a private right of action. Only the California Attorney General, a district attorney or county counsel may bring a civil action for violation of the law. Additionally, all reports by mandated reporters that report financial abuse under the law are confidential, and may be disclosed as required by law or court order. Finally, any reports made by bank personnel under the law are privileged against defamation liability.

Other States' Elder Financial Abuse Reporting Requirements

As of the end of 2006, all but six jurisdictions had some sort of mandatory reporting of elder abuse. The remaining six states authorize voluntary reporting. Three states already mandate that bank personnel report suspected elder abuse: Florida, Georgia and Mississippi. Fifteen other states have universal mandatory reporting laws, where banks are included in the persons required to report abuse: Delaware, Indiana, Kentucky, Louisiana, Missouri, New Hampshire, New Mexico, North Carolina, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Utah and Wyoming. The remaining states allow bank personnel to voluntarily report suspected elder abuse.

Massachusetts

Massachusetts adopted an emergency rule effective September 8, 2006 that prohibits several additional acts for lenders and brokers. Both brokers and lenders are prohibited from violating the disclosure requirements and loan limitations, as well as the prohibited practices provisions set forth in the

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Massachusetts regulations for high cost home mortgages. Additionally, a lender may not make or purchase such a loan originated by a broker.

The rule also prohibits brokers and lenders from engaging in specific deceptive or coercive acts, or to engage in a pattern or practice of failing to make required disclosures. The rule requires two different advertisement disclosures for brokers and lenders: (1) the type and identification number of the entity's license, and (2) if a broker or lender directs an employee's or an associate's actions, the entity's name and license identification number must be disclosed in the advertisement. The new rule also creates an additional broker advertisement disclosure requirement, that a broker cannot advertise any interest rate or loan without stating, "We arrange but do not make loans." With certain exceptions, the rule prohibits brokers from issuing a mortgage loan lock commitment for itself or a lender, or to imply that a consumer can lock a rate with the broker. Finally, the emergency rule requires brokers to provide the loan origination and compensation agreement to the consumer at the time of application.

The first two provisions of the Rule do not apply to reverse mortgage brokers because it limits brokers originating high cost home loans, the definition of which does not include reverse mortgages. However, reverse mortgage brokers are subject to the Rule's remaining 14 provisions.

The provisions of the Rule that apply to all brokers, including reverse mortgage brokers, are:

- A mortgage broker is prohibited from issuing a mortgage loan rate lock commitment on its own behalf or on behalf of a mortgage broker, or to imply that it can lock a rate on behalf of a consumer. A mortgage broker can take a rate lock commitment fee for transmittal to a mortgage lender prior to the issuance by the mortgage lender of a commitment or approval if: (1) the loan rate lock commitment is from the lender which intends to make the loan and conforms with 209 CMR § 42.11A, and (2) the rate lock commitment fee is made payable by the consumer to the mortgage lender which intends to make the loan. The broker may transmit the fee to the mortgage lender that intends to make the loan.
- Mortgage brokers may not advertise any of the following: (1) the amount or percentage of any down payment, (2) the number of payments or period of repayment, (3) the amount of any payment, or (4) the amount of any finance charge in any media without the following statement: "We arrange but do not make loans." No broker advertisement in any media may contain language that indicates or suggests that any broker will fund or approve a mortgage loan or guarantee a note.
- Mortgage brokers must provide the loan origination and compensation agreement to the consumer at the time of application. The content of the agreement must conform to 209 CMR § 42.16 and include signatures and dates by the consumer(s) and mortgage broker.
- A mortgage broker may not: have a consumer sign a blank or incomplete mortgage loan application or mortgage loan documents; sign a loan application or mortgage loan documents on behalf of a consumer; falsify income or asset information on a mortgage loan application or mortgage loan documents; make false promises to influence, persuade or induce a consumer to sign a mortgage loan application or mortgage loan documents; pressure or coerce a consumer to sign a mortgage loan application or mortgage loan documents by misrepresenting or omitting crucial information about the terms of the mortgage; discourage a consumer in a mortgage loan transaction from seeking or obtaining independent legal counsel or legal advice; or, engage in a pattern or practice of failing to make any disclosure to a consumer required by and at the time specified by any applicable state or federal law, regulation or directive.
- A mortgage broker must disclose the type and number of its license in an advertisement.
- Employees and persons associated with a mortgage broker must name the licensee and license number of the mortgage broker under whose license the individual is acting.

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- A mortgage broker may not require a consumer to use the real estate services of a particular entity, agent or broker.

Violation of the Rule constitutes grounds for the issuance of a cease and desist order, license suspension or license revocation.

Virginia

Last summer, Virginia joined a growing list of states that prohibit mortgage lenders or mortgage brokers from distributing advertising or written materials that give a false impression that the material is being sent by the consumer's current noteholder or is an official communication from a governmental agency.